



## AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between

**The Owner:** Williamson County  
710 Main Street, Ste. 101  
Georgetown, Texas 78626

**and Contractor** Parsons Commercial Roofing, Inc.  
P.O. Box 21835  
Waco, Texas 76702-1835

**for the Project:** Williamson County Adult Probation  
301 SE Inner Loop  
Georgetown, Texas 78626

**AGREEMENT**, this Agreement between Owner and Contractor (hereinafter called "Agreement") is entered into effective as of the date indicated on the preceding page, by and between Williamson County, a political subdivision of the State of Texas (hereinafter called the "Owner") and Parsons Commercial Roofing, Inc. (hereinafter called "Contractor").

**WHEREAS**, the Owner desires to retain a Contractor for the construction and repair of the roof at the Williamson County Adult Probation building located at 301 SE Inner Loop, Georgetown, Texas 78626 (hereinafter called the "Project"),

**WHEREAS**, the Owner desires a Contractor who will render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project, and

**NOW, THEREFORE**, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

## **ARTICLE 1 SCOPE OF WORK**

The Contractor has overall responsibility for and shall provide complete construction services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

## **ARTICLE 2 CONTRACT DOCUMENTS**

**2.1** The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The Uniform General Conditions for Williamson County ("General Conditions"), however, this Agreement shall control in the event of a conflict with those General Conditions;
- c. All Addenda issued prior to the Effective Date of this Agreement;
- d. All Change Orders issued after the Effective Date of this Agreement;

**2.2** The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

**2.3** The term "Contractor" shall be interchangeable with the terms "Proposer," "Bidder" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

## **ARTICLE 3 DEFINITIONS**

The terms, words and phrases used in the Contract Documents shall have meanings as follows.

**3.1 “Construction Documents”** means, collectively, the Drawings, Specifications, details, scope of work, accepted and approved Change Orders and other documents approved by Owner that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

**3.2 “Contract Sum”** means the total amount of all compensation payable to the Contractor for the Project and shall not exceed such amount, subject to adjustment as approved by Owner for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Contractor without reimbursement by Owner.

**3.3 “Final Completion”** means the stage in the progress of the Work when, in the Owner’s opinion, the entire Work has been completed, the Contractor’s obligations under the Contract Documents have been fulfilled, and the Owner is processing or has made final payment to the Contractor, as evidenced by a Certificate of Acceptance approved by the Owner. The Final Completion is a crucial element of the Project. Therefore, the Substantial Completion Date, as defined herein below, is not subject to change unless due to “force majeure” as defined herein and in any associated Contract Documents or unless agreed to in advance in writing by the parties.

**3.4 “Notice to Proceed”** refers to the written document issued by the Owner following acceptance of the proposal and execution of this Agreement which indicates the date on which the Work is to begin.

**3.5 “Owner”** means Williamson County and includes its designated Owner’s Designated Representative.

**3.6 “Owners Designated Representative or ODR”** means the individual described in Article 7.3 herein below.

**3.7 “Owner’s Specifications”** means the construction and contract administration requirements and standards as interpreted by Owner.

**3.8 “Standards and Standard Specifications”** means the construction and design requirements and the highest standards of Contractor’s profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction

**3.9 “Subcontractor”** means a person or entity that has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include any person or entity hired directly by the Owner.

**3.10 “Substantial Completion”** means the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the Owner’s opinion, the Work has progressed to the point such that all parts of the Work under

consideration are fully operational and usable for intended purposes, as evidenced by a Certificate of Substantial Completion approved by the Owner.

**3.11** “Work” means provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings, included in the Specifications or included in the scope of work attached or described herein, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work. The Contractor shall not be entitled to an increase in the Contract Sum due to the absence of any detail or specification the Contractor may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the Contractor shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

#### **ARTICLE 4 SUBSTANTIAL COMPLETION**

**4.1 Substantial Completion.** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify Owner’s Designated Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner’s Designated Representative does not consider the Work substantially complete, Owner’s Designated Representative will notify the Contractor giving reasons therefore. Failure on the Owner’s part to list a reason does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. After satisfactorily completing items identified by Owner’s Designated Representative, the Contractor shall then submit another request for Owner’s Designated Representative to determine Substantial Completion. If Owner’s Designated Representative considers the Work substantially complete, Owner’s Designated Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which the Contractor shall finish the punch list, and shall establish responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The certificate of Substantial Completion shall be signed by the Owner and the Contractor to evidence acceptance of the responsibilities assigned to them in such certificate.

**4.2** Owner intends to achieve Substantial Completion (as defined in this agreement) for all stages of construction on or before the following completion date:

**EXPECTED DATE OR TIME PERIOD FOR SUBSTANTIAL COMPLETION:**

Within 21 business days from the date of the Owner's Notice to Proceed.

Under no circumstances will the time for Substantial Completion exceed this date without a written amendment to this Agreement.

**4.3 THE TIMES SET FORTH IN THE CONSTRUCTION DOCUMENTS ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT.**

**ARTICLE 5 COMPENSATION**

Contract Sum. The Contract Sum for the Project is: Forty Thousand Nine Hundred Seventy Five and 77/100 Dollars (\$40,975.77)

**5.1 Contract Payments.** One-quarter (1/4) of the Contract Sum shall be paid to Contractor upon delivery of the materials needed for the Project with the remaining balance of the Contract Sum being due and payable upon Final Completion of the Project.

**5.2 Liquidated Damages.** For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of:

Five Hundred Dollars per day (\$500/day)

from any money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion. The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

**ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES**

**QUALITY OF WORK**

**6.1** Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Contractor shall render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project. The enumeration of specific duties and obligations performed by the Contractor hereunder shall not be construed to limit the general undertakings of the Contractor. The obligations of the Contractor hereunder run to and are for the benefit of only the Owner.

**6.2** Notwithstanding anything to the contrary contained in this Agreement, Owner and Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

**6.3** Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

**6.4** Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Contractor be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.

#### **COORDINATION OF THE WORK**

**6.5** Contractor shall provide Owner with a proposed schedule for the Project. The schedule will set forth the milestone dates and completion of the Project ("Project Schedule"). Owner shall have a right to modify the proposed Project Schedule prior to accepting it. Contractor shall complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule that is approved by Owner.

**6.6** Contractor shall designate a representative authorized to act on the Contractor's behalf with respect to the Project. Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interest of Owner. The Contractor agrees to provide an on-site, full-time superintendent for the duration of the Project.

**6.7** Contractor shall review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.

**6.8** Contractor shall visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

**6.9** Contractor shall, at Owner's request, attend meetings concerning the development and schedule of the Project.

**6.10** Contractor shall review the scope or work described herein or attached hereto as well as in other Construction Documents as they are developed by Owner and advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, scope of work and other Construction Documents.

**6.11** Contractor shall review the Construction Documents for compliance with all applicable laws and code requirements and with Williamson County requirements.

**6.12** Contractor shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

**6.13** Contractor shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

**6.14** Contractor shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Contractor shall not use any Subcontractor to which Owner has a reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

**6.15** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations and with the requirements of an Owner controlled insurance program, if any.

**6.16** Contractor shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents.

## **CONSTRUCTION WORK**

**6.17** Construction shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner and shall continue until Final Completion of all Work. The Contractor shall Construct the Work in strict accordance with the Construction Documents and Owner's Specifications within the time required by the Project Schedule approved by Owner.

**6.18** The Contractor hereby agrees to make any and all changes, furnish the materials and perform the Work which may be required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents, without nullifying this Agreement. **NO ALTERATIONS OR CHANGES SHALL BE MADE, HOWEVER, EXCEPT UPON THE WRITTEN ORDER OF THE OWNER, OR ITS AUTHORIZED REPRESENTATIVE.**

**6.19** Contractor shall organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work.

## **ARTICLE 7            OWNER'S RESPONSIBILITIES**

**7.1**     The Owner will identify a person as its Owner's Designated Representative ("ODR") who is authorized to act in the Owner's behalf with respect to the Project. The ODR shall examine the documents submitted by the Contractor and shall render decisions on behalf of the Owner to the extent allowed by Texas law.

**7.2**     The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Contractor's services and of the Work.

**7.3**     The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Contractor's responsibility for the Work. Contractor is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

**7.4**     Owner shall have the right to reject any defective Work on the Project. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Contractor on demand.

## **ARTICLE 8            OWNERSHIP AND USE OF DOCUMENTS**

**8.1**     INTENTIONALLY OMITTED.

**8.2**     INTENTIONALLY OMITTED.

## **ARTICLE 9            TIME**

**9.1**     **TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT.**

**9.2**     Unless otherwise approved, the Owner and the Contractor shall perform their respective obligations under the Contract Documents as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

## **ARTICLE 10          BONDS AND INSURANCE**

**10.1**    INTENTIONALLY OMITTED.

**10.2**    INTENTIONALLY OMITTED.

**10.3**    INTENTIONALLY OMITTED.



**10.4** The Contractor shall not commence Work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor. Prior to commencing any Work under this Agreement, Contractor shall provide evidence of the insurance coverage that meets the following requirements:

**10.4.1** The Contractor shall carry insurance in the types and amounts indicated below for the duration of the Agreement, which shall include items owned by Owner in the care, custody and control of Contractor prior to and during construction. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Agreement, as proof of continuing coverage. Contractor shall update all expired policies prior to submission of any payment requests hereunder. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.

**10.4.2** The Contractor shall provide and maintain, until the Work covered in this Agreement is completed and accepted by the Owner, the minimum insurance coverages in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

| Type of Coverage   | Limits of Liability                                 |
|--|---|
| a. Worker's Compensation   | Statutory   |
| b. Employer's Liability  |   |
| Bodily Injury by Accident  | \$500,000 Ea. Accident                              |
| Bodily Injury by Disease   | \$500,000 Ea. Employee                              |
| Bodily Injury by Disease   | \$500,000 Policy Limit                              |
| c. Commercial General Liability, including coverage for the following: |   |
| 1) Premises Operations   | Combined Single                                     |
| 2) Independent Contractors   | Limit for Bodily                                    |
| 3) Products/Completed<br>Operations                                    | Injury and Property<br>Damage of                    |
| 4) Personal Injury   | \$1,000,000<br>per occurrence or<br>its equivalent. |
| 5) Contractual Liability   |   |
| 6) Explosion, Collapse, Underground                                    |   |
| 7) Broad form property damage, to include fire legal liability         |   |

- d. Business Automobile Liability owned/leased, owned, hired
  - Combined single limit for Non-Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
- e. Owner's Protective Liability Insurance Policy, naming Williamson County and its employees as insured with the following limits:
 

|                       |                             |
|-----------------------|-----------------------------|
| Bodily Injury         | \$1,000,000 Each Occurrence |
| \$1,000,000 Aggregate |                             |

**10.4.3** The above insurance requirements are not intended to be compounded with the Contractor's standing insurance policies. If the Contractor already has in force insurance policies which provide the required coverage, there is no need to purchase duplicate coverage for this project

**10.4.4** Policies must include the following clauses, as applicable.

- a. "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to the Owner."
- b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Williamson County for liability arising out of operations under the Agreement with the Owner."
- c. "The Owner, it officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under Agreement with the Owner." This is not applicable to the workers' compensation policy.
- d. "The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner."

**10.4.5** Workers' Compensation Insurance Coverage:

- a. Definitions:
  - (1) Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by

the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

- (2) Duration of the project - includes the time from the beginning of the work on the project until the Contractor's work on the project has been completed and accepted by the Owner.
  - (3) Coverage – Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
  - (4) Persons providing services on the project ("subcontractor") - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, §401.011(44) for all employees of the Contractor providing services on the project, for the duration of the Project.
  - c. The Contractor must provide a certificate of coverage to the Owner prior to or contemporaneously with the execution of this Agreement.
  - d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
  - e. The Contractor shall obtain from each person providing services on the Project, and provide to the Owner:

- (1) a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
  - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- f. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
  - g. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
  - h. The Contractor shall post on the Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
  - i. The Contractor shall contractually require each person with who it contracts to provide services on a project, to:
    - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
    - (2) provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
    - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- (4) obtain from each other person with whom it contracts, and provide to the Contractor:
    - a. a certificate of coverage, prior to the other person beginning work on the Project; and
    - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - (5) retain all required certificate of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.
- j. By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
  - k. The Contractor's failure to comply with any of these provisions is a breach of Agreement by the Contractor which entitles the Owner to declare the Agreement void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

**10.4.6** If insurance policies are not written for the amounts specified above, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of primary coverage.

10.4.7 The furnishing of the above listed insurance coverage, as may be modified by the Contract Documents, must be tendered prior to execution of the Agreement.

10.5 In addition to the above required insurance, <sup>Manufacturer</sup> ~~Contractor~~ has agreed to provide liability coverage of consequential damages up to Ten Million Dollars (\$10,000,000.00).

10.6 The Contractor shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Contractor fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Contractor.

10.7 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

10.8 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

## ARTICLE 11 INDEMNITY

11.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, REPRESENTATIVES OF THE OWNER AND THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, ITS VARIOUS DEPARTMENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE, EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS

**ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.**

**11.2** The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

## **ARTICLE 12 SPECIAL WARRANTIES**

**12.1** Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

**12.2** Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

**12.3** Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

**12.4** Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of the Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.

**12.5** Except for the obligation of Owner to pay Contractor the Contract Sum pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this

Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

#### **ARTICLE 13            CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

#### **ARTICLE 14            TERMINATION**

**14.1 Termination for Cause.** If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach is cured within three (3) business days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within three (3) business days, then and in that instance, the three (3) business day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within three (3) business days or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies available hereunder and under the law, terminate this Agreement.

**14.2 Termination for Convenience.** The Owner may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to Contractor. In the event of such termination, it is understood and agreed that only the amounts due to Contractor for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Owner's termination of this Agreement for convenience.

#### **ARTICLE 15            MISCELLANEOUS PROVISIONS**

**15.1 Assignment; Successors and Assigns.** This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

**15.2 Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.



**15.3 Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Williamson County where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

**15.4 Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

**15.5 Interpretation.** In the event of any dispute over the meaning or application of any provision of the Contract Documents, the Contract Documents shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of the Contract Documents.

**15.6 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

**15.7 Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

**15.8 Records.** Contractor agrees that Owner or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Contractor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees that Owner shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Owner shall give Contractor reasonable advance notice of intended audits.

**15.9 Notices.** All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

**15.10 Severability.** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

**15.11 No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Owner, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Owner does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**15.12 Current Revenues.** Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

**15.13 Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**15.14 Sales and Use Tax Exemption.** Owner is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. § 151.309, as amended.

**15.15 Texas Public Information Act.** To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Owner, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any information or data furnished to Owner whether or not the same are available to the public. It is further understood that Owner, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Owner, its officers and employees shall have no liability or obligation to Contractor for the disclosure to the public, or to any person or persons, of any software or a part thereof, or other items or data furnished to Owner by Contractor in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**15.16 Force Majeure.** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon

the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

**15.17 Equal Opportunity in Employment.** The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**15.18 Reports of Accidents.** Within 24 hours after Contractor becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Contractor), whether or not it results from or involves any action or failure to act by the Contractor or any employee or agent of the Contractor and which arises in any manner from the performance of this Agreement, the Contractor shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Contractor shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Contractor, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Contractor's performance of work under this Agreement.

**15.19 Relationship of the Parties.** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**15.20 Appropriation of Funds by Owner.** Owner believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Contractor understands and agrees that the Owner's payment of amounts under this Agreement is contingent on the Owner receiving appropriations or other expenditure authority sufficient to allow the Owner, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

**15.21 Execution in Counterparts.** This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

**15.22 Entire Agreement.** This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. **NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE OWNER HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND**

THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

## **ARTICLE 16        NOTICES**

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:                                  Williamson County Judge (or successor)  
710 Main Street, Ste. 101  
Georgetown, Texas 78626

with copy to:                                  Honorable Jana Duty (or successor)  
Williamson County Attorney  
405 M.L.K. Street, Box #7  
Georgetown, Texas 78626

If to Contractor:                              Parsons Commercial Roofing, Inc.  
P.O. Box 21835  
Waco, Texas 76702-1835

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

### **Party Representatives**

The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Williamson County Facilities  
c/o: Joe Latteo, Director  
3101 S.E. Inner Loop  
Georgetown, Texas 78626  
Office: (512) 943-1609  
Fax: (512) 930-3313

The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Parsons Commercial Roofing, Inc.  
c/o: Charlie Montgomery  
P.O. Box 21835  
Waco, Texas 76702-1835  
Phone (512) 254-881-1733  
Fax 512) 254-881-1995

The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

WILLIAMSON COUNTY  
Williamson County, Texas,

PARSONS COMMERCIAL ROOFING,  
INC., a Texas corporation

By: 

Printed Name: Dan Gattis

Title: County Judge

By: 

Printed Name: Stuart Parsons

Title: President

**EXHIBIT "A"**  
**SCOPE OF WORK**

- Mechanically fasten a ½" insulation board over the existing roof;
- Mechanically fasten a white 40 MIL Duro-Last Roof System and new flashing at all curbs, pipes and walls (existing metal will be used); and
- Replace siding on gables of the building.

**EXHIBIT "B"**  
**CONTRACTOR'S WARRANTY**  
**AND**  
**MANUFACTURERS WARRANTY**



**DURO-  
LAST®**  
Roofing, Inc.

525 Morley Drive  
Saginaw, MI 48601

# 15 YEAR NDL WARRANTY

Warranty No: \_\_\_\_\_

Duro-Last, Inc., ("Duro-Last") grants this No Dollar Limit ("NDL") warranty to the owner ("Owner") of a building containing a Duro-Last Roofing System ("D-L System") installed by an Authorized Dealer/Contractor ("Contractor"), subject to the conditions and limitations contained herein.

Duro-Last's obligation during the 1<sup>st</sup> through the 15<sup>th</sup> years shall be to repair any leak in the D-L System caused by any defect in a component of the D-L System or by the workmanship of the Contractor, but only as said workmanship pertains to the installation of the D-L System itself and not as it pertains to other work performed, if any. Duro-Last's obligation includes, at Duro-Last's option, either the repair or replacement of part or all of the D-L System, and also includes the furnishing of/or cost of labor (at the Contractor list price in effect at the time of the repair) to repair the D-L System provided the following conditions are met:

- a) Duro-Last and its Contractor have been paid in full for the D-L System;
- b) The Owner has notified Duro-Last by certified mail, return receipt request, within 30 days of the discovery any leak or other alleged D-L System failure;
- c) The Owner allows Duro-Last's employees or agents or its Contractor access to the D-L System including, if necessary, the removal and replacement by Owner at Owner's expense of any and all rooftop overburden;
- d) Duro-Last authorizes the repair, and,
- e) At Duro-Last's option, either Duro-Last's own employees or agents or a Contractor makes the repair.

## LIMITATIONS

- 1) This limited warranty does not apply to a D-L System installed on a single-family residence.
- 2) Duro-Last is not liable for any D-L System failure nor for subsequent damages arising from causes outside Duro-Last's control including, but not limited to:
  - a) Damage caused by fire, lightning, hurricane, gale, hail, tornado, flood, earthquake or acts of God; or
  - b) Damage caused by accident, vandalism, intentional act, negligence or failure to use reasonable care, whether on the part of the Owner or another; or
  - c) Damage caused by any unauthorized modification to the D-L System including, but not limited to, damage caused by unauthorized components used in installation or repair, or by additional equipment or structures added to or made a part of the roof, or by traffic, or by chemicals not normally found in nature or the like; or
  - d) Damage caused by defects in the building design; or
  - e) Interior condensation and/or moisture entering the D-L System through walls, copings, structural defects, HVAC Systems, or any part of the building structure, including from adjacent buildings.
- 3) Duro-Last does not warrant the watertightness of metal products that are located outside of the termination of the Duro-Last membrane.
- 4) Duro-Last does not warrant against color change and/or pattern change and/or print change in the D-L System.
- 5) This limited warranty passes to future Owners of the building for the full fifteen (15) years hereof.
- 6) This limited warranty becomes effective only upon signature by both an authorized Duro-Last representative and the original Owner.
- 7) This limited warranty is governed in all respects by the laws of the State of Michigan, regardless of the state of purchase or installation.
- 8) Duro-Last does not waive any rights under this limited warranty by refraining from exercising its rights in full in one or more instances.

THE REMEDIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES PROVIDED BY DURO-LAST FOR ALLEGED FAILURE OF THE D-L SYSTEM, OR FOR CONTRACTOR WORKMANSHIP. THIS LIMITED WARRANTY ALSO COVERS CONSEQUENTIAL DAMAGES DERIVED FROM LEAKS CAUSED BY DEFECTS WARRANTED AGAINST ABOVE. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE (EITHER EXPRESS OR IMPLIED) THAT EXTEND BEYOND THE FACE OF THIS LIMITED WARRANTY; DURO-LAST EXPRESSLY DISCLAIMS ANY SUCH FURTHER WARRANTIES.

If DURO-LAST's Authorized Dealer/Contractor made any statements about DURO-LAST's merchandise and services, those statements are not warranties, cannot be relied upon by Owner, and are not part of the contract for sale or installation.

DURO-LAST, ®INC.

Date \_\_\_\_\_

Customer's Signature \_\_\_\_\_

Name of Building \_\_\_\_\_

Bldg. Designation: \_\_\_\_\_ Sq. Foot: \_\_\_\_\_

Serial Number: \_\_\_\_\_

Signature of Authorized Duro-Last Representative \_\_\_\_\_

Address of Building \_\_\_\_\_

City, State & Zip of Building \_\_\_\_\_

Installed By \_\_\_\_\_

DL-15 COM 3/08