

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into by and between WILLIAMSON COUNTY, TEXAS, a public body corporate and politic of the State of Texas, acting by and through the Williamson County Commissioners Court (hereinafter referred to as "County") and Beirne, Maynard & Parsons, LLP (hereinafter referred to as "Contractor,") authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, the County has received a letter from the Department of Justice dated March 14, 2011, a copy of which is attached hereto as Exhibit A, in which the Justice Department makes specific requests of the County to allegedly comply with the Voting Rights Act as it relates to the issues set forth in the Department of Justice letter; and

WHEREAS, professional services of the Contractor are necessary to assist the County comply with the obligations imposed by State in federal law; and

WHEREAS, the County has determined that this Agreement is for personal or professional services and, therefore, exempt from competitive bidding under Chapter 262, Local Government Code.

NOW, THEREFORE, County and Contractor, in consideration of the mutual covenants and agreement herein contained, do mutually agree as follows:

SECTION I SCOPE OF AGREEMENT

1.01 Contractor shall provide all necessary services to represent the County as it relates to Exhibit "A", hereinafter referred to as "the Project," including but not limited to the following:

- A. Advise the County regarding Voting Rights Act compliance; and
- B. Defend the County, if necessary, in any suit brought regarding Exhibit "A".

1.02 County agrees to provide to Contractor access to all necessary records and access to personnel for this project and to fully cooperate with Contractor in this Project.

SECTION II CONTRACTOR'S COMPENSATION

2.01 For and in consideration of the services rendered by Contractor, and subject to the limit of appropriation under Section VI, County shall pay to Contractor an amount not to exceed \$100,000, including reimbursable expenses, if any, to be paid as follows:

A. \$365 per hour, plus reasonable expenses, as set out in monthly invoices. The invoices will be paid within 30 days from the date they are received by the County. If the project is not completed when the initial "not to exceed" amount is charged to be invoiced, the project is concluded and the Contractor's obligations cease unless the County and contractor extend the contract pursuant to Section XIII.

2.02 All costs of publication of public meeting notices and/or mailing any notices of required under state or federal law shall be the responsibility of County. Any such costs paid by Contractor on behalf of County shall be reimbursed at cost upon presentation of invoices.

SECTION III TERMINATION

3.01 County may terminate this Agreement, without cause and for convenience, at any time by providing ten (10) calendar days written notice to the Contractor.

3.02 In the event this Agreement is terminated prior to the end of its term, County shall pay contractor for all attorney time at a rate of \$365 per hour and actually incurred costs expended to the date of termination upon presentation of invoices documenting such time and actually incurred costs.

3.03 Upon receipt of such termination notice, Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.

3.04 Within thirty (30) days after receipt of notice of termination, Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.

3.05 Copies of all completed or partially completed documents and records prepared under this Agreement shall be delivered to County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement upon payment of all time and actually incurred costs by County to Contractor.

SECTION IV INSURANCE

4.01 Contractor shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Contractor, name of insurance company, policy number, term of coverage, and limits of coverage. Contractor shall

provide County with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Contractor shall obtain such insurance from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- A. Professional Liability insurance with limits not less than \$2 Million each claim/annual aggregate.

SECTION V NOTICE

5.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Contractor at the addresses set forth below.

5.02 If mailed, any notice or communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail.

5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

- A. If to Contractor:

Joseph M. Nixon
Beirne, Maynard & Parsons, LLP
1300 Post Oak Blvd., Suite 2500
Houston, TX 77056

- B. If to County notice must be sent to:

Williamson County Judge
Dan Gattis (or successor)
710 Main Street, Ste. 101
Georgetown, Texas 78626

5.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VI LIMIT OF APPROPRIATION

6.01 Prior to the execution of this Agreement, Contractor has been advised by County, and Contractor clearly understands and agrees, such understanding and agreement being of the

absolute essence to this contract, that County shall have available the total maximum sum of \$100,000, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.

6.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$100,000, including reimbursable expenses, if any.

SECTION VII SUCCESSORS AND ASSIGNS

7.01 County and Contractor bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement.

7.02 Neither County nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.

7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION VIII PUBLIC CONTRACT

8.01 Contact with the news media shall be the sole responsibility of County.

8.02 Under no circumstances, whatsoever, shall Contractor release any material or information developed in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION IX COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with highest standards of Contractors practicing in the Austin-Round Rock-San Marcos MSA, applicable thereto and shall use that highest degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

SECTION X OWNERSHIP OF DOCUMENTS

10.01 County shall be the absolute and unqualified owner of all reports, data and other documents prepared pursuant to this Agreement by the Contractor and its consultants (deliverables).

10.02 Copies of all complete or partially completed reproducible reports and other documents prepared pursuant to this Agreement shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.

SECTION XI INDEMNIFICATION

11.01 CONTRACTOR SHALL INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF Contractor OR ANY OF ITS EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.

11.02 CONTRACTOR SHALL ALSO INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH NEGLIGENT ACT, ERROR, OR OMISSION BY CONTRACTOR, ITS AGENTS, CONSULTANTS OR EMPLOYEES.

SECTION XII TERM

The Initial Term of this Agreement shall commence on the date of County's execution of hereof and conclude when the project is complete or the County's project limit of appropriation's is reached, which ever occurs first, unless the County and the contractor extend the project subject to Section XIII.

SECTION XIII MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XIV MISCELLANEOUS

13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.

13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.

13.03 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.

13.04 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

13.05 Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

13.06 Each party to this Agreement 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.

13.07 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.

13.08 Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County 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.

13.09 Contractor agrees that County 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 County 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. County shall give Contractor reasonable advance notice of intended audits.


13.10 The obligations of the Parties under this Agreement do not constitute a general obligation or indebtedness of either Party for which such Party is obligated to levy, pledge, or collect any form of taxation. It is understood and agreed that County shall have the right to terminate this Agreement if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Contractor.

13.11 County's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by County within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, County shall notify Contractor of such an invoice of the discrepancy. Following County's notification of any discrepancy as to an invoice, Contractor must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. County shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. County's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

**SECTION XV
EXECUTION**

This Agreement shall become effective on the date executed by County.


WILLIAMSON COUNTY:


Signature

10-27-2011
Date


Title: County Judge

Attest:


Signature

CONTRACTOR:

Beirne, Maynard & Parsons, L.L.P.


Signature

Date: October 19, 2011

Title: ~~Chairman~~ Of Counsel