

# **AGREEMENT FOR ARCHITECTURAL AND ENGINEERING SERVICES**

**THIS AGREEMENT FOR ARCHITECTURAL AND ENGINEERING SERVICES** ("Agreement") is made and entered into by and between **Williamson County**, a body corporate and politic under the laws of the State of Texas, hereinafter "County", and **Brinkley Sargent Wiginton Architects, Inc.**, hereinafter "A/E".

## **RECITALS**

The County intends to construct: a Sheriff's Office Training Center, a waterline from CR 130 to the future training center site, a new gun range screen wall and the demolition of the existing wall, hereinafter called the "Project"; and

The County desires that the A/E perform certain professional architectural and engineering services in connection with the Project; and

The A/E represents that it is qualified and desires to perform such services;

**NOW, THEREFORE**, the County and the A/E, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

## **SECTION I**

### **SCOPE OF AGREEMENT**

The A/E agrees to perform professional architectural and engineering services in connection with the Project as stated herein, and for having rendered such services, the County agrees to pay to the A/E compensation as stated in the sections to follow.

## **SECTION II**

### **CHARACTER AND SCOPE OF SERVICES**

**A.** In consideration of the compensation herein provided, A/E shall perform professional architectural and engineering services for the Project, which are acceptable to the County, based on standard architectural and engineering practices and the scope of work described on the Exhibit(s) attached to this Agreement. A/E shall also serve as County's professional architect and engineer in those phases of the Project to which this Agreement applies and will consult with and give advice to County during the performance of A/E's services.

**B.** A/E shall not commence work until A/E has been thoroughly briefed on the scope of the Project and has been notified in writing to proceed, as evidenced by a Notice to Proceed.

**C.** County shall provide A/E with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular Project at no cost to A/E; however, any and all such information shall remain the property of County and shall be returned, if the County so instructs A/E.

**D.** A/E shall perform the following Basic Scope of Services (sometimes referred to herein as the “Basic Scope of Services”, “Basic Services” or the “Scope of Services”):

1. The Basic Scope of Services shall generally consist of all elements of work, materials and equipment required for the development of the Project, including any Public Hearings, satisfactory to the County and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Williamson County.
2. The following documents shall be used in the development of the Project:
  - a. National Environmental Policy Act (NEPA);
  - b. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions;
  - c. Americans with Disabilities Act (ADA) Regulations;
  - d. International Building Code, current edition as updated
  - e. National Electrical Code, latest edition;
  - f. Williamson County Design Criteria & Project Development Manual, latest edition; and
  - g. All other local, state and federal documents, codes and regulations to which the Project must comply.
3. As part of the Scope of Services, A/E shall submit its work products to County for review at regular intervals and as requested by County.
4. The detailed Scope of Services to be provided by the County for the Project is set forth herein as **Exhibit “A”** to this Agreement, and is expressly incorporated and made a part hereof.
5. The detailed Basic Scope of Services for the Project to be provided by the A/E is set forth herein as **Exhibit “B”** to this Agreement, and is expressly incorporated and made a part hereof.

### **SECTION III**

#### **ADDITIONAL SERVICES AND CHARGES**

For the performance of the services not specifically described as Basic Services under Section II above (sometimes referred to herein as “Additional Services”), County shall pay and A/E shall receive, under a negotiated written contract modification, Additional Services compensation based upon the method and rates set forth **Exhibit “C”**.

The A/E shall not, however, be compensated for work made necessary by A/E's negligent errors or omissions. In the event of any dispute over the classification of A/E's services as Basic or Additional Services under this Agreement, the decision of the County shall be final and binding on A/E.

It is expressly understood and agreed that A/E shall not furnish any Additional Services without the prior written authorization of the County. The County shall have no obligation to pay for such Additional Services which have been rendered without the prior written authorization of the County as hereinabove required. Furthermore, in no event will the County be obligated to compensate the A/E for any Additional Services and charges in an amount in excess of \$300,000.00.

#### SECTION IV

##### TIME FOR PERFORMANCE

**A. Time for Performance.** A/E agrees to complete the services called for in **Exhibit "A"** in accordance with the Production Schedule set forth in **Exhibit "D"**.

#### SECTION V

##### SUBMITTAL PROCESS AND REVISIONS TO A/E WORK PRODUCT

**A. Submittal Process.** A/E's A/E Work Product will be reviewed by County under its applicable technical requirements and procedures, as follows:

1. Reports, plans, surveys, field notes, original drawings, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, data, sketches and/or schematics prepared by A/E and supporting documents (collectively referred to herein above and hereinafter as the "A/E Work Product(s)"), shall be submitted by A/E on or before the dates specified for completion, as set out in the Production Schedule set forth in **Exhibit "D"**.
2. Upon receipt of the A/E Work Products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the Scope of Services described herein) have been included in the A/E Work Products in compliance with the requirements of this Agreement. The completeness of any A/E Work Product submitted to County shall be determined by County within fourteen (14) days of such submittal and County shall notify A/E in writing within such time period if such A/E Work Product has been found to be incomplete.
3. If the submission is Complete, County's technical review process will then begin. If the submission is incomplete, County shall notify A/E, who shall perform such professional services as are required to complete the work and resubmit it to County within seven (7) days. This process shall be repeated until a submission is complete.

4. Within seven (7) days of determining that a particular A/E Work Product is Complete, County shall review the completed work for compliance with the Scope of Work and determine whether or not to accept such A/E Work Product. If necessary, the completed work shall be returned to A/E, who shall perform any required work and resubmit it to County. This process shall be repeated until the work is accepted. "Acceptance" shall mean that in the County's opinion substantial compliance with the requirements of this Agreement has been achieved.
5. After Acceptance, A/E shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive final approval by the County. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.

**B. Revision to A/E Work Product.** A/E shall make, without expense to County, such revisions to the A/E Work Product as may be required to correct negligent errors or omissions so the A/E Work Product meets the needs of County, but after the approval of the A/E Work Product any revisions, additions, or other modifications made at County's request which involve extra services and expenses to A/E shall entitle A/E to additional compensation for such extra services and expenses; provided, however, A/E hereby agrees to perform any necessary corrections to the A/E Work Products which are found to be in negligent error or omission as a result of the A/E's development of the A/E Work Product, at any time, without additional compensation. If it is necessary due to such error or omission by A/E to revise any A/E Work Product in order to make the Project constructible, A/E shall do so without additional compensation. In the event of any dispute over the classification of A/E's A/E Work Products as Complete, Accepted, or Approved under this Agreement, the decision of the County Judge shall be final and binding on A/E, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

**C. Days.** All references to a "day" in this Agreement shall mean a calendar day unless otherwise specified.

## SECTION VI

### THE A/E'S COMPENSATION

For and in consideration of the Basic Services rendered by the A/E, and subject to the limit of appropriation under Section X, the County shall pay to the A/E a lump sum amount of **\$857,076** hereinafter called the "Lump Sum Amount" plus the amount payable under Section III (Additional Services).

A/E and County acknowledge the fact that the Lump Sum Amount stated above is the total estimated costs of the Basic Services to be rendered under this Agreement. This Lump Sum Amount is based upon the labor and non-labor costs estimated to be required in the performance of the various phases of Basic Services provided for under this Agreement. The compensation for the Basic Services shall be paid by County based on the following milestones:

1. County approval of schematic design: 20% of Lump Sum Amount
2. County receipt of 50% design drawings: 15 % of Lump Sum Amount



3. County approval of design drawings, specifications and estimate: 15% of Lump Sum Amount
4. County approval of construction drawings, specifications and contract documents: 20% of Lump Sum Amount
5. Three months after County approval of construction drawings, specifications and contract documents: 5 % of Lump Sum Amount
6. Six months after County approval of construction drawings, specifications and contract documents: 5% of Lump Sum Amount
7. Nine Months after County approval of construction drawings, specifications and contract documents: 5% of Lump Sum Amount
8. One year after County approval of construction drawings, specifications and contract documents or upon Issuance of Notice of Substantial Completion of the entire project by the County whichever is sooner: 5% of Lump Sum Amount
9. Notice of Substantial Completion of entire project is issued by the County: 5 %
10. Notice of Project Final Completion of entire project is issued by the County and all required deliverables have been received by the County: 5%

## SECTION VII

### TIME OF PAYMENT; PAYMENT AND INTEREST; AND RIGHT TO AUDIT

**A. Time of Payment.** During the performance of the Basic Services provided for in this Agreement, as described in **Exhibit "B"**, payments for Basic Services shall be made based upon the milestones completed as described in Section VI. Upon completion of a milestone, the A/E shall submit a sworn statement to the County detailing the milestone completed and the amount of payment due for achieving the milestone.

During the performance of Additional Services as described in Section III, on or about the last day of each calendar month during the performance of the services to be provided under this Agreement, the A/E shall submit a sworn statement to the County, along with time sheets detailing hours worked, receipts detailing expenses incurred and other support documentation, in a form acceptable to the Williamson County Auditor, setting forth the Additional Services provided for by this Agreement which were completed during such calendar month, the compensation which is due which have not been previously billed or paid. In the event the statement includes charges based upon hourly billing rates for services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to the County or whether they are the basis of invoices from subcontractors for which the A/E seeks reimbursement from the County, the charges shall be accompanied by an affidavit signed by an officer or principal of the A/E certifying that the work was performed, it was authorized by the County and that all information contained in the invoice that is being submitted is true and correct.

The County shall review the statements for both Basic and Additional Services within thirty (30) days of receipt and approve them with such modifications, if any, as it deems appropriate. The County shall pay each statement within thirty (30) days after the County's approval; provided, however, that the approval or payment of any statement shall not be considered to be evidence of performance by the A/E to the point indicated by such statement or of receipt or acceptance by the County of the services covered by such statement.

**B. Interest and Late Payments.** County's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Interest charges for any overdue 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 an error appears in an invoice/application for payment submitted by A/E, County shall notify A/E of the error not later than the twenty first (21st) day after the date County receives the invoice/application for payment. If the error is resolved in favor of A/E, A/E shall be entitled to receive interest on the unpaid balance of the invoice/application for payment submitted by A/E beginning on the date that the payment for the invoice/application for payment became overdue. If the error is resolved in favor of the County, A/E shall submit a corrected invoice/application for payment that must be paid in accordance within the time set forth above. The unpaid balance accrues interest as provided by Chapter 2251 of the Texas Government Code if the corrected invoice/application for payment is not paid by the appropriate date.

**C. Right to Audit.** A/E agrees to maintain, for a period of seven years, detailed records identifying each individual performing the services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, and provide such other details as may be requested by the County Auditor for verification purposes. A/E agrees that County or its duly authorized representatives shall, until the expiration of three 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 A/E which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. A/E shall retain its records within the boundaries of Williamson County and further agrees that County shall have access during normal working hours to all necessary A/E 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 A/E reasonable advance notice of intended audits.

## SECTION VIII

### SUSPENSION AND TERMINATION

**A. Suspension.** County may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within thirty (30) calendar days of receipt by A/E of written Notice of Reinstatement from County. In the event such suspension of the Project or the A/E's services hereunder extends for a period of ninety (90) consecutive calendar days or more, A/E may terminate this Agreement in writing.

**B. Termination.** County may terminate this Agreement at any time by notice in writing to the A/E. Upon receipt of such notice, the A/E 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. Within sixty (60) days after receipt of notice of termination, the A/E shall submit a statement, showing in detail the

services performed under this Agreement to the date of termination. The County shall then pay the A/E that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made. Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated.

## SECTION IX

### NOTICE

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 the County or the A/E at the following addresses. If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the A/E: Brinkley Sargent Wiginton Architects, Inc.  
611 South Congress Ave.  
Austin, Texas 78704

Attention: James O. Wiginton, Principal-In-Charge

To the County: Williamson County Judge  
Dan A. Gattis (or successor)  
710 Main Street, Suite 101  
Georgetown, Texas 78626

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

## SECTION X

### LIMIT OF APPROPRIATION

A/E does understand and agree, said understanding and agreement being of the absolute essence of this Agreement, that the total maximum compensation that A/E may become entitled to hereunder and the total maximum sum that County shall become liable to pay to A/E hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$1,157,076.00.



## **SECTION XI**

### **SUCCESSORS AND ASSIGNS**

The County and the A/E 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. Neither the County, nor the A/E shall assign or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

## **SECTION XII**

### **INSURANCE REQUIREMENTS**

A/E shall maintain in full force and effect worker's compensation insurance, professional liability insurance, and general liability insurance during the entire term of this Agreement, in the amount set forth in **Exhibit "E"** - Insurance Requirements, and shall instruct and authorize insurer to immediately notify County directly in the event that any said policy coverage is changed or terminated. Said liability insurance policy shall be purchased from a reliable company licensed or authorized to do business in Texas. Proof of required insurance shall be submitted on Certificate(s) of Insurance and Endorsement (s) issued to County, as required in **Exhibit "E"**.

A/E shall require that any and all other contractors and/or consultants engaged or employed by A/E carry and maintain the same insurance and coverages in relation to the services to be rendered by such contractors and/or consultants. A/E shall submit to County proof of such insurance. The maintenance in full current force and effect of such form and amount of insurance, in such amount as County shall have accepted, shall be a condition precedent to the A/E's exercise or enforcement of any rights under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the County at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies.

## **SECTION XIII**

### **PUBLIC CONTACT**

Contact with the news media, citizens of Williamson County or governmental agencies shall be the responsibility of the County. Under no circumstances shall the A/E release any material or information developed in the performance of its services hereunder without the express written permission of the County.



## **SECTION XIV**

### **COMPLIANCE AND STANDARDS**

The A/E shall render the services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the architectural and engineering professions to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and A/E's performance.

## **SECTION XV**

### **OWNERSHIP OF DOCUMENTS, COPYRIGHT**

The County shall be the absolute and unqualified owner of all A/E Work Product prepared pursuant to this Agreement by the A/E and its subcontractors with the same force and effect as if the County prepared same. Copies of all completed or partially completed A/E Work Product prepared pursuant to this Agreement by the A/E shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The A/E may retain one (1) set of reproducible copies of such documents and such copies shall be for the A/E's sole use in preparation of studies or reports for Williamson County only. The A/E is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of the County.

## **SECTION XVI**

### **INDEMNIFICATION**

A/E AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY A/E, A/E'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH A/E INCLUDING, WITHOUT LIMITATION, A/E'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH A/E EXERCISES CONTROL.

A/E FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A/E'S FAILURE TO PAY A/E'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY A/E.

A/E FURTHER AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY A/E IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT A/E'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM A/E IS NOT LEGALLY LIABLE, A/E'S OBLIGATIONS SHALL BE IN PROPORTION TO A/E'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY ACTS, ERRORS OR OMISSIONS OF THE A/E OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE A/E, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS IN THE CONSTRUCTION DOCUMENTS OR IN THE ADMINISTRATION OF THE AGREEMENT BY THE A/E OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE A/E, AND/OR INADEQUATE SERVICES PURSUANT TO THE CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT AS DEFINED AND REQUIRED BY THIS AGREEMENT, AGREEMENT EXHIBITS AND THE CONSTRUCTION CONTRACT DOCUMENTS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN THE A/E AT THE COUNTY'S COST. A/E SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT A/E, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH A/E EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE A/E, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH A/E EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

## **SECTION XVII**

### **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 XVIII**

### **AUTHORITY OF COUNTY JUDGE**

The County Judge or his/her designee and/or agent as designated by the County Judge (individually or collectively the "County Judge") shall decide any and all questions which may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by the A/E. The County Judge's decision shall be final. It is mutually agreed by both parties that the County Judge shall act as referee in all questions arising under the terms of this Agreement between the parties hereto and that the decisions of the County Judge in such shall be final and binding alike on both parties hereto. But nothing contained in this section shall be construed to authorize the County Judge to alter, vary or amend any of the terms or provisions of this Agreement.

## **SECTION XIX**

### **MERGER**

The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

## **SECTION XX**

### **SEVERABILITY**

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.

## **SECTION XXI**

### **VENUE AND GOVERNING LAW**

This Agreement shall be performable in Williamson County, Texas. 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 Williamson County, Texas. Furthermore, 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.

## **SECTION XXII**

### **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.

## **SECTION XXIII**

### **NO THIRD PARTY BENEFICIARIES**

This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

## **SECTION XXIV**

### **CONSTRUCTION**

Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

## **SECTION XXV**

### **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.

## **SECTION XXVI**

### **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 County, its past or present officers, employees, or agents or employees, 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.

## **SECTION XXVII**

### **NO WAIVER**

No action or inaction taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement



and such action or inaction will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

## SECTION XXVIII

### EXHIBITS

In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Agreement, the following shall control:


- a. As between this Agreement and its Exhibits or any other documents which make up this Agreement, this Agreement shall govern.
- b. In the event of any conflict, discrepancy, or inconsistency among any of the other Agreement Exhibits, the A/E shall diligently review all such documents and notify the County immediately upon discovery of the same for resolution by the County.
- c. Any documents not included or expressly contemplated in this Agreement do not, and shall not, form a part of this Agreement. The Agreement Exhibits are intended to be complimentary, and a requirement in one document shall be deemed a requirement in all documents.

## SECTION XXIX

### EXECUTION

The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners' Court of Williamson County, Texas, so authorizing. The A/E's duly authorized representative acknowledges by his/her signature below that he/she has read and understands the above paragraphs and that A/E has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives. This Agreement shall be effective as of the date of the last party's execution of this Agreement.

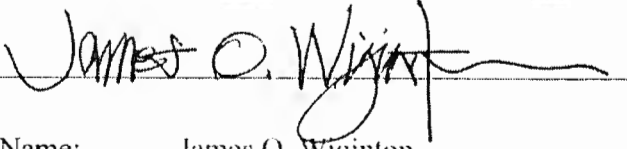
#### WILLIAMSON COUNTY:

By:   
Dan A. Gattis  
Williamson County Judge

Date Signed: 11-12, 2015

**A/E:**

Name of Company: Brinkley Sargent Wiginton Architects

By: 

Printed Name: James O. Wiginton

Title: Principal- In-Charge

Date Signed: NOVEMBER 4<sup>th</sup>, 2015

## **Exhibit "A"**

### **Scope of Services to be Provided by the County**

1. The County will designate a Project Manager who will serve as the single point of contact for correspondence and direction. Legal notifications to the County shall be made in accordance with the Agreement and shall also be sent to the County's designated Project Manager.
2. The County will provide geotechnical exploration, sampling and testing in consultation with the A/E.
3. The County will provide a geotechnical report, based on the exploration and testing described above, which will provide geotechnical information from which the A/E may base their foundation design.
4. The County will provide quality assurance sampling and testing of concrete and stockpiled paving materials.
5. The County will provide quality assurance sampling and testing for concrete and paving materials that have been placed by the contractor.
6. The County will provide welding inspection when and as required by the local building code.
7. The County will provide reviews of contract documents in accordance with the approved Production Schedule.
8. The County will provide the pavement design.

## **Exhibit "B"**

### **Basic Scope of Services to be Provided by the A/E**

THE FOLLOWING SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE AGREEMENT. TO THE EXTENT THIS SCOPE OF SERVICES IS INCONSISTENT WITH THE AGREEMENT, THE AGREEMENT WILL SUPERSEDE THE SCOPE OF SERVICES AND WILL BE CONTROLLING.

THE A/E SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE ARCHITECT OR ENGINEER PROFESSIONAL TO BE DETERMINED BY COUNTY AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN THE AGREEMENT.

Capitalized terms set out herein shall be as defined in the Agreement. To the extent any capitalized terms set out herein are not defined in the Agreement, such terms shall be as defined in Agreement between the County and Construction Manager-at-Risk and Uniform General Conditions for Williamson County.

In consideration of the compensation provided in the Agreement, A/E shall perform the following Scope of Services, based on standard architectural and engineering practices:

#### **A. General**

- a. The A/E will provide all professional services including but not limited to architectural, building envelope waterproofing, data, security, structural engineering, mechanical engineering, electrical engineering, plumbing, landscape architecture, civil engineering surveying, and audio visual services necessary for the complete planning, design, bidding, construction administration and warranty documentation for the Project.
- b. The A/E shall identify a Project Manager authorized to act on behalf of the A/E with respect to the Project. Once approved by County, the A/E's Project Manager shall not be changed without the County's written approval.
- c. Identify, prepare and submit all permits required for the Project.
- d. Digital (PDF) copies of documents including but not limited to plans, specifications and estimates shall be provided to the County at the County's request during the Project.
- e. The A/E shall maintain a complete project file including but not limited to all correspondence, plans, specifications, estimates, submittals, requests for information, records documenting all changes to the Contract Documents, contractor pay applications and A/E certificates for Payment.
- f. The A/E shall work with the County, the County's designated Contractor and other contractors of the County to provide the services described in this Agreement.
- g. The A/E shall prepare and acquire all permits. The County shall pay the actual permit fee.
- h. The A/E shall stake the boring locations indicated on the geotechnical engineer's boring plan and shall determine the ground surface elevation at each boring.



## **B. Planning and Schematic Design Phase**

- a. Review existing site information and local ordinances/policies to determine possible zoning changes or code exemptions that will be necessary to construct the Project. Prepare documents and attend meetings required to secure zoning or code exemptions.
- b. Meet with County staff that has been identified by the County as stakeholders for the Project to determine the Project requirements.
- c. Develop a schematic floor plan and exterior elevations based on the Project requirements and provide with an itemized cost estimate to the County for approval.
- d. Revise schematic and exterior elevations as requested by County to address budget or other constraints/concerns until the schematic, elevations and associated cost estimate are approved by the County.

## **C. Design Development Phase**

- a. Based on the approval of schematic documents, the A/E shall prepare and submit Design Development Documents that conform to the County's budget requirements for the County's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, building envelope waterproofing details and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, landscape architecture, civil, plumbing, data, security, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems. The Design Development Documents shall establish the amount required and in general the quality levels for each material and system.
- b. The County shall receive interim review sets of plans and specifications at 50% and 75% complete. Comments from the County shall be addressed in revisions to the plans and specifications prior to any subsequent reviews.
- c. Digital CADD files of all plan sheets shall be provided to the County in appropriate BIM format

## **D. Construction Document Phase**

- a. Based on the County's approval of the Design Development Documents, and on the County's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work (as defined in the Contract Documents), the A/E shall prepare Construction Documents for the County's approval. The Construction Documents shall indicate in detail the materials, systems, and other requirements for construction of the Work.
- b. The A/E shall submit the Construction Documents to the County, advise the County of any adjustments to the estimate of the Cost of the Work (as defined in the Contract Documents), adjust the Project documents to bring the Project into compliance with the Project budget and request the County's approval.
- c. Digital CADD files of all plan sheets shall be provided to the County in appropriate BIM format

- d. The A/E shall provide to the County a complete list of shop drawings to be submitted for review.
- e. The A/E shall provide to the County a complete list of all testing requirements.

#### **E. Bidding Phase**

- a. The A/E shall assist the County in responding to questions, issuing addendums, and evaluating alternatives to specified materials or methods.

#### **F. Construction Phase**

- a. The A/E shall provide administration of the construction contract between the County and the Contractor as set forth below and in the Uniform General Conditions for Williamson County. In the event there is a conflict between the terms and conditions of this Exhibit and the Uniform General Conditions for Williamson County, the Uniform General Conditions for Williamson County shall control.
- b. The A/E shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents... On the basis of the site visits, the A/E shall keep the County informed about the progress and quality of the portion of the Work completed, and report to the County (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.
- c. The A/E shall interpret and advise the County of that interpretation on matters concerning performance under, and requirements of, the Contract Documents on written request of either the County or Contractor. The A/E's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- d. The A/E shall render initial decisions on Claims between the County and Contractor as provided in the Contract Documents or as requested by County.
- e. The A/E shall review and certify the amounts due the Contractor. The A/E's certification for payment shall constitute a representation to the County, based on the A/E's evaluation of the Work, and on the data comprising the Contractor's Application for Payment, that, to the best of the A/E's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the A/E. The issuance of a Certificate for Payment shall be a representation that the A/E has (1) made on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the County to substantiate the Contractor's right to payment.
- f. The A/E shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval.

- g. The A/E shall review and approve or take other appropriate action upon the Contractor's submittals (including Shop Drawings, Product Data and Samples, etc.) as necessary to ascertain their conformance with the requirements for the Work as indicated in the Contract Documents.
- h. The A/E shall review and respond to requests for information about the Contract Documents. The A/E shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The A/E's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the A/E shall prepare and issue supplemental Drawings and Specifications in response to requests for information.
- i. Subject to the approval of the County, the A/E may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. All authorizations for minor changes in the Work shall be in writing, or confirmed by the A/E in writing within 24 hours of authorization of the change. The A/E shall, immediately upon authorizing a minor change in the Work, provide written notice to the County thereof, describing the change, and confirming that the change will not affect the Contract Time or the Contract Sum. The A/E shall prepare Change Orders and Construction Change Directives for the County's approval and execution in accordance with the Contract Documents.
- j. The A/E shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the County, for the County's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. The A/E's inspections shall be conducted with the County to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- k. When the Work is found to be substantially complete, the A/E shall advise the County about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.
- l. The A/E shall forward to the County the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the County against liens; and (3) any other documentation required of the Contractor under the Contract Documents.
- m. The A/E shall furnish the following to the owner prior to final payment to the contractor: (1) One paper copy of the Project specifications and plan set, utilizing 24 inch by 36 inch sheets unless otherwise directed by County, accurately showing the contract drawings with all changes made to the design during the bidding and construction phases of the Project. (2) One electronic pdf file accurately showing the



contract drawings and specifications with all changes made to the design during the bidding and construction phases of the Project, and (3) one complete electronic set of project documents, with each document being a separate pdf file, including but not limited to plans, specifications, estimates, correspondence, submittals, invoices, and contracts.

- n. Upon request of the County, and prior to the expiration of one year from the date of Substantial Completion, the A/E shall, without additional compensation, conduct a meeting with the County to review the facility operations and performance.
- o. The A/E's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date of the end of the last warranty period for any equipment, material or workmanship on the Project.
- p. The following activities shall also be performed as part of the basic services:
  - 1. Issue prefunctional checklist and review Contractor Start-Up Reports.
  - 2. Performance verify and document during functional testing and provide associated reports and issues log.
  - 3. Check calibration of all DDC space temperature sensors against temperature indication on DDC control system.
  - 4. Check calibration of all CO2 sensors.
  - 5. Check heating and cooling sequences for 60% of the HVAC units.
  - 6. Check duct system protection to insure interior of main supply and main return ductwork at various locations during construction at duct access doors in ductwork to insure free of construction debris.
  - 7. Check operation of exhaust fans to insure operating per specified sequence.
  - 8. Check final Test and Balance Report for supply air grilles. Check grilles on approximately 60% of system after test and balance completed. Walk with Test and Balance Contractor on any corrections as needed.
  - 9. Check mechanical unit interior during and after construction to insure units are clean when turned over at end of project.
  - 10. Work with the County and Controls Contractor to customize graphics to the County needs.
  - 11. Verify lighting controls are programmed and operation per plans and the County requirements.
  - 12. Attend initial owner start-up/training sessions of the mechanical system as needed. (Review O & M Manuals for completeness.)
  - 13. Coordinate with Architect, General Contractor and Sub-Contractors on problems that arise during construction process and document solutions.
  - 14. Provide periodic site observations during construction and provide site inspection reports of items in need of attention.
  - 15. Develop mechanical electrical and plumbing start up plans for project and coordinate with project schedule.
  - 16. Provide plans, notes, specification, and contract documents.
  - 17. Attend meetings during project with Contractors to cover items for project as required.
  - 18. Provide final Mechanical report.



19. Check building envelope during construction for drain plane integrity and work with job superintendent throughout project.
20. Check building envelope during construction for thermal plane integrity and work with job superintendent throughout project.
21. Check base flashing during construction.
22. Check window flashing during construction
23. Check mechanical unit flashing during construction
24. Check exterior sheathing from interior prior to insulation.
25. Issue certification of compliances required by City of Georgetown building officials for architectural and structural work.

## Exhibit "C"

### Hourly Rates

<u>BSW Architects, Inc.</u>	<u>Hourly Rates</u>
Sr. Principal	287.00
Project Manager	207.00
Project Architect	207.00
Project Designer	143.00
Staff Architect	104.00
Architectural Designer	84.00
Sr. Programmer	142.00
Interior Designer	118.00
Quality Control/Spec.	230.00
Construction Adm.	143.00
Administrative	89.00

<u>Half Associates, Inc.</u>	<u>Hourly Rates</u>
Principal	275.00
Civil Lead/Project Mgr.	224.00
Sr. Engineer	208.00
Mid. Engineer	155.00
Jr. Engineer	110.00
Sr. Designer	150.00
EIT	100.00
CADD/GIS Tech.	104.00
RPLS	155.00
Survey Tech.	115.00
2-Man Survey Crew	140.00
Landscape Architect	120.00
Landscape Designer	86.00
Administrative Clerical	68.00

<u>Datum Engineers</u>	<u>Hourly Rates</u>
Principal	175.00
Sr. Project Manager	150.00
Project Manager	132.00
Project Engineer	108.00
Graduate Engineer	93.00
Sr. Production Manager	140.00
Tech II	95.00
Technician	72.00
Support	63.00

<u>Able 2 Access, Inc.</u>	<u>Hourly Rates</u>
Consultant	125.00
Filing Fee	175.00

<u>Datacom Design Group</u>	<u>Hourly Rates</u>
Principal	190.00
Sr. TC	145.00
CAD	65.00

<u>Hendricks Consulting Engineers</u>	<u>Hourly Rates</u>
Principal	200.00
Sr. Engineer	180.00
Engineer	150.00
Project Manager	150.00
Sr. Designer	120.00
Designer I	75.00
Computer Aided Designer	80.00
Administrative/Clerical	65.00

## **Exhibit “D”**

### **Production Schedule**

1. The time from the Notice to proceed for this agreement to the Owner’s receipt of a final schematic, elevations and cost estimate for review shall not exceed 60 days.
2. The time from receiving approval of the schematic to the submittal of the 100% Design Document Review Plans specifications and estimate shall not exceed 90 days.
3. The time from receiving approval of the design drawings, specifications and estimate to receiving 100 % complete construction plans shall not exceed 90 days.

## **Exhibit "E"**

### **Insurance Requirements**

During the term of this Agreement, A/E agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, including coverage on same for independent subcontractor(s). WILLIAMSON COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate. A/E shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

A/E shall be responsible for payment of premiums for all of the insurance coverages required under this section. A/E further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the A/E is responsible hereunder, A/E shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$75,000 in the A/E's insurance must be declared and approved in writing by County in advance.

A/E shall not commence any field work under this Agreement until he has obtained all required insurance and such insurance has been approved by County. A/E shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of A/E hereunder.

The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. A/E shall furnish County with a certification of coverage issued by the insurer. A/E shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.



It is the intention of the County and agreed to and hereby acknowledged by the A/E, that no provision of this Agreement shall be construed to require the County to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required under this Agreement and/or Exhibits which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.