

AGREEMENT FOR ROOF CONSULTING SERVICES

THIS AGREEMENT FOR ROOF CONSULTING 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 **Jim Whitten Roof Consultants, LLC**, hereinafter "Consultant".

RECITALS

The County intends to construct improvements to the roofs of three County owned facilities being located at 102 W. 3rd Street, Georgetown, Texas; 300 N. Main Street, Georgetown, Texas; and 115 W. 6th Street, Taylor, Texas, hereinafter collective called the "Project"; and

The County desires that the Consultant perform certain professional engineering/consulting services in connection with the Project; and

The Consultant represents that it is qualified and desires to perform such services;

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

SECTION I

SCOPE OF AGREEMENT

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

SECTION II

CHARACTER AND SCOPE OF SERVICES

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

B. Consultant shall not commence work until Consultant has been thoroughly briefed on the scope of the Project and has been notified to proceed.

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

SECTION IV

TIME FOR PERFORMANCE

Consultant agrees to commence with the Scope of Services within one week of receiving written authorization to proceed. Consultant will complete the 75% Review Set of the Bidding and Construction Documents for County's review within three (3) weeks from commencement. Consultant will complete the final Bidding and Construction Documents one week following receipt of County's review comments. Following the Bidding Phase and upon award of a construction contract for the Project, the Consultant shall proceed with the performance of the services called for in **Exhibit "A"**, Construction Administration Phase of this Agreement and complete such services upon notification of final payment on the prime contract to be completed. The above time limits may, for good cause, be extended, in writing, by the County as the Project proceeds.

SECTION V

REVISIONS TO CONSULTANT'S WORK PRODUCT

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

SECTION VI

THE CONSULTANT'S COMPENSATION

For and in consideration of the Scope of Services rendered by the Consultant, the County shall pay to the Consultant a firm fixed fee of **\$26,000.00**, hereinafter called the "Basic Fee", plus any amount payable under Section III (Additional Services and Charges).

SECTION VII

PAYMENT AND RIGHT TO AUDIT

Consultant of written Notice of Reinstatement from County. In the event such suspension of the Project or the Consultant's services hereunder extends for a period of ninety (90) consecutive calendar days or more, Consultant may terminate this Agreement in writing.

B. Termination. County may terminate this Agreement at any time, for cause or for convenience, by notice in writing to the Consultant. Upon receipt of such notice, the Consultant 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 ten (10) days after receipt of notice of termination, the Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The County shall then pay the Consultant 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 Consultant 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 Consultant: Jim Whitten Roof Consultants, LLC,
 Attn: Jim Whitten
 P.O. Box 200925
 Austin, Texas 78720

To the County: Williamson County Judge
 Bill Gravell, Jr. (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

SUCCESSORS AND ASSIGNS

The County and the Consultant bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Neither the County, nor the Consultant shall assign or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating

SECTION XV

INDEMNIFICATION

CONSULTANT 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 AN ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY CONSULTANT, CONSULTANT'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH CONSULTANT INCLUDING, WITHOUT LIMITATION, CONSULTANT'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL.

CONSULTANT 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 CONSULTANT'S FAILURE TO PAY CONSULTANT'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS AGREEMENT BY CONSULTANT.

CONSULTANT 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 CONSULTANT IN THE PERFORMANCE OF THIS AGREEMENT.

THE LIMITS OF INSURANCE REQUIRED IN THIS AGREEMENT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT CONSULTANT'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 CONSULTANT IS NOT LEGALLY LIABLE, CONSULTANT'S OBLIGATIONS SHALL BE IN PROPORTION TO CONSULTANT'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 NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONSULTANT, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH CONSULTANT EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN CONSULTANT IN ANY SUCH PROCEEDINGS AT THE COUNTY'S COST. CONSULTANT SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT CONSULTANT, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH CONSULTANT 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 CONSULTANT, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH CONSULTANT EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

SECTION XVI

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

SECTION XXI

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 XXII

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 XXIII

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 XXIV

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 XXV

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

COUNTY:

WILLIAMSON COUNTY, TEXAS

By: Bill Gravell, Jr.
Bill Gravell, Jr.
Williamson County Judge

Date Signed: December 17, 2019

CONSULTANT:

JIM WHITTEN ROOF CONSULTANTS, LLC

By: Jim Whitten

Printed Name: Jim Whitten

Title: Vice-President

Date Signed: 12/09, 2019

2. Bidding Phase Services

- Consultant will coordinate and attend a pre-bid meeting for bidders to discuss the project, County's requirements, provide interpretations, and answer questions.
- Consultant will assist County with answering requests for information and bidder substitution requests during the bid process, and if warranted, will issue addenda to clarify the Bidding and Construction Documents.
- Consultant will assist County with bid tabulation and evaluation and based upon review of bidder qualifications and bid amount, provide a recommendation for County award. If necessary, Consultant will assist County with negotiating a final contract amount.
- With County approval, Consultant will prepare and issue a Notice of Award to the successful bidder and issue the Agreement Between Owner and Contractor.
- Based on County approved scheduling, Consultant will prepare and issue the Notice to Proceed.

3. Construction Phase Services

- Once a contract for construction has been let, Consultant will review pre-job submittals and shop drawings for conformance with the Contract Documents. Consultant will issue a submittal review letter report documenting noted non-compliance with the Contract Documents.
- Pre-Roofing Meeting: Consultant will attend a pre-roofing meeting with County and County representatives, the contractor and its subcontractors, and the roofing materials manufacturer. Following the pre-roofing meeting, Consultant will prepare the pre-roofing meeting minutes and distribute to all attendees.
- Progress Meetings: Consultant will attend periodic progress meetings during the work (contractor will be responsible for setting meeting dates and issuing meeting minutes).
- Construction Phase Site Visits: Consultant will perform periodic unannounced site visits during the roof construction to observe and document compliance with the Contract Documents and reviewed submittals. After each site visit, Consultant will prepare a site visit report with representative photos of its observations. Consultant will coordinate with County and the roofer for scheduling its site visits.
- Consultant will perform one site visit to determine substantial completion and develop substantial completion "punch-list".
- Consultant will perform one site visit to document completion of the substantial completion punch-list and document final completion.
- Consultant will recommend that County back-charge the Contractor for time and expenses incurred by Consultant in the event more than one substantial completion or more than one final completion site visit are required due to Contractor delay or negligence in completing the Work within the Contract Time.
- Review close-out submittals and record documents, issue transmittal letter with close-out documents.

EXHIBIT "B"

INSURANCE REQUIREMENTS

Consultant must comply with the following insurance requirements at all times during this Agreement:

- 1. Coverage Limits.** Consultant, at Consultant's sole cost, shall purchase and maintain during the entire term while this Agreement is in effect 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 \$1.0 Million per occurrence and \$2.0 Million in the aggregate.
 - 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 \$1.0 Million in the aggregate.
 - d. Professional Liability Errors and Omissions Insurance in the amount of \$1.0 Million per claim.
- 2. Additional Insureds; Waiver of Subrogation.** County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.
- 3. Premiums and Deductible.** Consultant shall be responsible for payment of premiums for all of the insurance coverages required under this section. Consultant further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Consultant is responsible hereunder, Consultant shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000.00 in the Consultant's insurance must be declared and approved in writing by County in advance.
- 4. Commencement of Work.** Consultant shall not commence any field work under this Agreement until he/she/it has obtained all required insurance and such insurance has been approved by County. As further set out below, Consultant shall not allow any subcontractor/subconsultant(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 Consultant hereunder.
- 5. Insurance Company Rating.** The required insurance must be written by a company approved to do business in the State of Texas with a financial standing of at least an A-

With copy to: Williamson County Facilities Department
Attn: Director
3101 S.E. Inner Loop
Georgetown, Texas 78626

2. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- 10. Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Consultant shall be borne solely by Consultant, with certificates of insurance evidencing such minimum coverage in force to be filed with County.