

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**AGREEMENT FOR PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and AGCM, Inc. (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires that Consultant provide certain professional construction management and related services (hereinafter "Services") for Fort Bend County Sheriff's Office Administration Building (hereinafter "Project"); and

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

WHEREAS, Consultant represents that it is qualified and desires to perform such Services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Scope of Services**

Consultant shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A).

**Section 2. Personnel**

2.1 Consultant represents that it presently has, or is able to obtain, if necessary, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project. For the

avoidance of doubt, this Section shall only apply to any employees of Consultant and shall not be construed to relate to any contractors involved in the Project which Consultant may from time to time interact with as a part of Consultant's duties.

### **Section 3. Compensation and Payment**

3.1 Consultant's fees shall be calculated at the rates set forth in the attached exhibit. The Maximum Compensation for the performance of Services within the Scope of Services described in the attached Exhibit A is one hundred sixty-four thousand eight hundred fifty-six dollars and 00/100 (\$164,856.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without written agreement executed by the parties.

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 Consultant shall submit invoices as requests for payments for installments of the Total Maximum Compensation for approval and processing to County staff designated by the Facilities Management & Planning Director, one (1) electronic (pdf) and/or one (1) original on a monthly basis showing the amounts due for services performed on or before the tenth (10<sup>th</sup>) day of each calendar month during the progress of the Services. Each invoice and request for payment shall be in a form acceptable to the County and shall reflect any amount representing the proportionate part of the Services performed during the previous month. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the County Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed; however, payment shall not be unreasonably withheld.

### **Section 4. Limit of Appropriation**

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of one hundred sixty-four thousand eight hundred fifty-six dollars and 00/100 (\$164,856.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not exceed one hundred sixty-four thousand eight hundred fifty-six dollars and 00/100 (\$164,856.00), unless agreed to in writing by the Parties to this Agreement.



## **Section 5. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than four hundred (400) calendar days thereafter. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

## **Section 6. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

#### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request.

#### **Section 9. Inspection of Books and Records**

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability 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:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability



for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of CMG Holdings, Inc. and its employees.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by CMG Holdings, Inc.

10.1.4 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Section 11. Indemnity**

**CONSULTANT SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Section 12. Confidential and Proprietary Information**

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.



### **Section 13. Independent Consultant**

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent Consultant, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

### **Section 14. Notices**

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Facilities Management and Planning Attn: Director 301 Jackson Street, Suite 301 Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street, 1 <sup>st</sup> Floor Richmond, Texas 77469
Consultant:	AGCM, Inc. 9950 Westpark Drive, Suite 300 Houston, Texas 77063

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section 15. Compliance with Laws**

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

#### **Section 16. Performance Representation**

16.1 Consultant represents to County that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Consultant will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Consultant represents to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

#### **Section 17. Assignment**

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

#### **Section 18. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.



**Section 19. Successors and Assigns**

County and Consultant 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 the other party, in respect to all covenants of this Agreement.

**Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date executed by the final party.

FORT BEND COUNTY

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

APPROVED:

\_\_\_\_\_  
James Knight,  
Facilities Management & Planning Director

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Marcus D. Spencer,  
First Assistant County Attorney

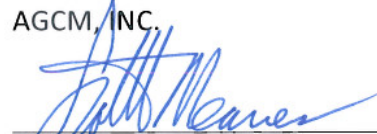
#### AUDITOR'S CERTIFICATE


I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

I:\Marcus\Agreements\Facilities\SO Admin\Agreement - Const Mgmt.AGCM.v3.docx.12/4/2017

AGCM, INC.

  
Authorized Agent – Signature

  
Authorized Agent – Printed Name

04-Dec-2017  
Date



# EXHIBIT A



## HOUSTON

9950 Westpark Drive, Suite 300  
Houston, TX 77063  
P.O. Box 70635  
Houston, TX 77270  
Ofc 713/316-4506  
Fax 713/316-0893

November 4, 2017

Jamie Knight  
Facilities Management & Planning  
301 Jackson Street  
Suite 301  
Richmond, TX. 77469

Re: Fort Bend County Sheriff Office Building – Construction Management Services

Dear Jamie:

AG|CM, Inc. is pleased to have the opportunity to propose Construction Management Services for the Sheriff office Project. Our firm will provide the personnel to perform the scope of services outlined in the following:

**A – Scope of services (attachment A):**

**B – Man-hour Summary and Schedule (attachment B):**

**C – Proposed Fee and assumed duration:**

Proposed period:

- Construction Phase Services – December 2017 to December 2018

Staff proposed: - Construction Manager, approximately 18 hours per week  
- Senior Construction Manager, estimated at 2 hour per week

Total Proposed Fee is based on estimated hours per week, for a “Not to Exceed” amount of \$164,856.00

We greatly appreciate your confidence and the opportunity to continue to provide professional services to Fort Bend County!

Kind Regards,

A handwritten signature in blue ink, appearing to read 'M. Schmitt', is written over a light blue circular background.

Marty Schmitt  
Vice President of East Texas Region  
361-443-4572  
[mschmitt@agcm.com](mailto:mschmitt@agcm.com)



## ATTACHMENT "A"

### **Fort Bend County Justice Center Expansion – AG|CM SOW**

#### **Scope of Services to support Facilities Management & Planning in providing Construction Management Services:**

##### **Construction Phase Services**

- Establish and maintain communication protocol between the Owner, Architect and Construction GC.
- Monitor overall budget and schedule and advise the Owner of any trends that affect the timely procedures and cost effective completion of the Project.
- Maintain thorough knowledge of the plans and specifications.
- Personally observe major assemblies placed in the construction for general compliance to the contract documents, supplemental instructions from the Architect, and support the quality assurance efforts of the Inspector(s).
- Coordinate construction logistics between the Construction GC and the Owner.
- Review Construction GC schedule of values/cost breakdown and construction schedule and recommend approval/changes and disapproval.
- Attend, arrange and conduct a variety of meetings, as requested by the Owner.
- Review and analyze proposed change orders and make recommendations to Owner.
- Assess and evaluate pricing on all change order requests taking the lead in negotiating fair and equitable resolutions and managing schedule impacts.
- Review requests for information (RFI) and architect's supplemental instructions (ASI). Track RFI's and submittals as required through completion of the process.
- Generate periodic site visit reports describing general events, noting problems and unusual events.
- Take appropriate photographs that document construction progress and conformity with Contract Documents.
- Coordinate preparation of the punch-list and implement corrective work.

**AG|CM, Inc.****Fort Bend County - Sheriff Office Building Project**

Title/Position/Item		Year 2017	Year 2018	Year 2019	Year 2020	Year 2021	Total
PERSONNEL							
0	Sr. Construction Manager	\$2,100	\$18,200	\$0	\$0	\$0	\$20,300
0	Construction Manager	\$12,780	\$131,776	\$0	\$0	\$0	\$144,556
	Yearly Estimate Totals	\$14,880	\$149,976	\$0	\$0	\$0	\$164,856
Project Total							<b>\$164,856</b>



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-290713

Date Filed:  
12/05/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

AG|CM, Inc.  
Corpus Christi, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

County of Fort Bend

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

25464  
Professional Construction Management Services - County of Fort Bend County Sheriff's Office Administration Building

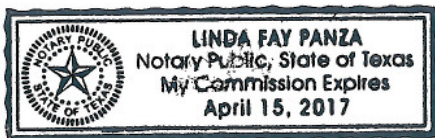
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Anderson, Derwood	Corpus Christi, TX United States	X	
	Anderson, Gail	Corpus Christi, TX United States	X	

5 Check only if there is NO Interested Party.

☐

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

*Scott Meurer*  
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said *Scott Meurer*, this the 5th day of December, 2017, to certify which, witness my hand and seal of office.

*Linda F. Panza*  
Signature of officer administering oath

*Linda F. Panza*  
Printed name of officer administering oath

*Office Manager*  
Title of officer administering oath