

§

§

§

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

(2725 FM 521 – CSCD Parking Area)

This Agreement ("Agreement") is made and entered into by and between Fort Bend County, Texas ("County"), a political subdivision of the state of Texas, and WSB, LLC, d/b/a WSB Engineers and Surveyors, Inc. ("Contractor"), a Minnesota Liability Company. County and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Contractor is a professional engineering and land surveying firm which provides engineering and surveying services in the state of Texas; and

WHEREAS, County desires for Contractor to provide engineering services and topographic surveying services for the rehabilitation of the parking area for the Fort Bend County Community Supervision and Corrections Department located at 2725 FM 521, Fresno, Fort Bend County, Texas 77545; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services for County; and

WHEREAS, pursuant to the requirements of Chapter 2254 of the Texas Government Code, County has determined that Contractor is the most highly qualified provider of such professional services and the Parties have negotiated a fair and reasonable price for the same; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

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

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Contractor shall render services to County as defined in Contractor's Proposal dated September 6, 2023 (hereinafter, the "Services") attached hereto as "Exhibit A" and incorporated by reference for all intents and purposes.

3. **Time for Performance.** Time for performance of the Scope of Services under this Agreement shall begin with Contractor's receipt of Notice to Proceed (the "Commencement Date") and shall end no later than eighteen (18) months from the Commencement Date. Contractor shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by County.
4. **Compensation and Payment Terms.**
 - (a) Contractor's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Contractor for the Services performed under this Agreement is Sixty Thousand and 00/100 Dollars (\$60,000.00). In no event shall the amount paid by County to Contractor under this Agreement exceed said Maximum Compensation without an approved change order.
 - (b) Contractor understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
 - (c) County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the Fort Bend County Facilities Management and Planning Director, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. 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 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.
5. **Limit of Appropriation.** Contractor understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is Sixty Thousand and 00/100 Dollars (\$60,000.00). In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Contractor 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 Sixty Thousand and 00/100 Dollars (\$60,000.00) specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed Sixty Thousand and 00/100 Dollars (\$60,000.00).

6. **Non-appropriation.** Contractor understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify Contractor in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
7. **Taxes.** County is a body corporate and politic under the laws of the state of Texas and as such, is exempt from sales and use taxes. County shall furnish evidence of its tax-exempt status upon written request by Contractor.
8. **Insurance.** Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor 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. Contractor shall obtain such insurance written on an Occurrence form from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - (b) 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.
 - (c) 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 the policyholder.
 - (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - (e) Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if

required). All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County.

If required coverage is written on a claims-made basis, Contractor 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 the work under this Contract is completed.

Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by County.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

Approval of the insurance by County shall not relieve or decrease the liability of the Contractor.

9. **Indemnity.** TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR OR CONTRACTOR'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL. CONTRACTOR SHALL FURTHER PROCURE AND MAINTAIN GENERAL LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT AND SHALL FURNISH A CERTIFICATE OF INSURANCE FOR THE SAME SHOWING FORT BEND COUNTY, TEXAS AND THE MEMBERS OF COMMISSIONERS COURT AS AN ADDITIONAL INSURED.
10. **Public Information Act.** Contractor expressly acknowledges and agrees that County is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall County be liable to Contractor for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, County agrees to maintain the confidentiality of information provided by Contractor expressly marked as proprietary or confidential. County shall not be liable to Contractor for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Contractor further acknowledges and agrees

that the terms and conditions of this Agreement are not proprietary or confidential information.

11. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. Contractor in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
12. **Independent Contractor.** In the performance of work or services hereunder, Contractor shall be deemed an independent Contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Contractor. Contractor 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.
13. **Use of Customer Name.** Contractor may use County's name without County's prior written consent only in Contractor's customer lists. Any other use of County's name by Contractor must have the prior written consent of County.
14. **County/County Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
15. **Personnel.** Contractor represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor or agent of Contractor who, in County's opinion, is incompetent or by his conduct become detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, Contractor shall comply with, and will require that all Contractor's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its

premises or systems for security reasons, and general health and safety practices and procedures.

16. **Confidential and Proprietary Information.** Contractor 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 Contractor 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 Contractor 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 Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor'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 Contractor who can be shown to have had no access to the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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. Contractor 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, Contractor shall advise County immediately in the event Contractor 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 Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor 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, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

Contractor 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. Contractor 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.

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

17. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion or termination of this Agreement. Contractor shall promptly furnish all such data and material to County on request.
18. **Inspection of Books and Records.** Contractor shall permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect such books and records shall survive the termination of this Agreement for a period of four years. Notwithstanding the foregoing, Contractor shall bear no liability or responsibility for deliverables that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.
19. **Termination.** County may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor. Upon termination of this Agreement by County, Contractor shall be paid in accordance with Section 4, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 4 above. No fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor by County.
20. **Force Majeure.** Notwithstanding anything to the contrary contained herein, neither Party shall be liable to the other for any delay or inability to carry out its obligations under this Agreement if such delay or inability is the result of a Force Majeure Event. Within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, a Force Majeure Event includes, but is not limited to: strikes or other labor disputes, severe weather disruptions, natural disasters, fire or other acts of God; riots, war, or other emergencies; action of any governmental entity; the discovery of any hazardous substance or differing and unforeseeable site conditions; and

any other inabilities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

21. **Time is of the Essence.** Time is of the essence with respect to each and every term, provision, and obligation set forth in this Agreement.
22. **Assignment.** Contractor may not assign this Agreement to another party without the prior written consent of County.
23. **Successors and Assigns Bound.** County and Contractor each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
24. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall Contractor release any material or information developed or received during the performance of Services hereunder unless Contractor obtains the express written approval of County or is required to do so by law.
25. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

If to County: Fort Bend County Facilities Management and Planning
Attn: Facilities Director
301 Jackson Street
Richmond, Texas 77469

And

Fort Bend County, Texas
Attention: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to Contractor: WSB, LLC
d/b/a WSB Engineers and Surveyors, Inc.
701 Xenia Ave S
Suite 300
Minneapolis, MN 55416

26. **Performance Representation.** Contractor represents to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession (“Professionals”) practicing in the greater Houston metropolitan area. Contractor shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
27. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect.
28. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
29. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
30. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
31. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
32. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Contractor hereby verifies that Contractor and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list

prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
33. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
34. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
35. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
36. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

IN WITNESS WHEREOF, and intending to be legally bound, County and Contractor hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY, TEXAS

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

WSB, LLC

d/b/a WSB Engineers and Surveyors, Inc.

By: WSB Engineering Holding Inc.,
Its sole Manager



Authorized Agent – Signature

David Balmos

Authorized Agent- Printed Name

Vice President

Title

1/8/2024

Date

APPROVED:



James Knight, Director
Facilities Management and Planning

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

EXHIBIT A

(Follows Behind)



September 6, 2023

James Knight
Director, Facilities Management and Planning
Fort Bend County
301 Jackson St, Suite 301
Richmond, TX 77469

Re: Site Design – Fort Bend County Facilities
2725 FM 521 Rd

Dear Mr. Knight:

Thank you for the opportunity to provide professional engineering services to Fort Bend County. We will prepare design and construction plans for the pavement rehabilitation of the parking area for the Fort Bend County facilities located at 2725 FM 521 Rd. Our scope of work includes:

1. Perform topographic survey of the parking lot pavement
2. Coordinate with TxDOT
3. Prepare pavement details
4. Design storm sewer
5. Prepare construction documents for bidding
6. Prepare cost estimates and specifications

We propose to provide the services for a lump sum amount of \$60,000.

Please contact me if you have any questions or if you need any additional information at 713-204-0763 or email me at dbalmos@wsbeng.com.

Sincerely,

WSB

A handwritten signature in blue ink that reads "David C. Balmos".

David Balmos, PE
Vice President