



## Travis County Commissioners Court Agenda Request

**Meeting Date:** April 22, 2014

**Prepared By/Phone Number:** Richard Villareal/512-854-4881, Marvin Brice, CPPB/512-854-9765, Purchasing

**Elected/Appointed Official/Dept. Head:** Cyd Grimes, C.P.M., CPPO

**Commissioners Court Sponsor:** Judge Biscoe

**Agenda Language:** Approve contract award for Commissioning Services for the 416 West 11th Street Office Building to Goetting and Associates, Inc.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

Facilities Management Department (FMD) currently requires professional building enhanced commissioning services for the 416 West 11<sup>th</sup> Street Office Building. The purpose of this project is to have commissioning service to better meet the needs of the building.

FMD and the Purchasing Office have negotiated the terms and fees of a Professional Services Agreement (PSA) with Goetting and Associates, Inc., a pre-qualified professional engineering firm with the expertise in this type of service recommended by FMD as the most highly qualified firm to complete this project.

FMD recommends, and Purchasing concurs, that the County award a PSA to Goetting and Associates, Inc. in the amount of \$73,000.00 (70,000.00 Basic Services Fee and \$3,000.00 Not-to-Exceed Reimbursable Expenses).

- **Contract-Related Information:**

Award Amount: \$73,000.00 (Not-to-Exceed)

Contract Type: Professional Service Agreement

Contract Period: Through Project Completion

➤ **Solicitation-Related Information:**

Solicitations Sent:

Responses Received:

HUB Information:

% HUB Subcontractor:

➤ **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments:

➤ **Funding Information:**

SAP Shopping Cart #:

Funding Account(s): Funds Reservation Document No. 300001102

Comments:



**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**TRAVIS COUNTY**

**AND**

**GOETTING AND ASSOCIATES, INC.**

**FOR**

**COMMISSIONING SERVICES**

**FOR**

**416 WEST 11<sup>TH</sup> STREET OFFICE BUILDING  
AND PARKING STRUCTURE**

**CONTRACT NO. 4400001906**

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## PROFESSIONAL SERVICES AGREEMENT (PSA)

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**PROFESSIONAL SERVICES AGREEMENT (PSA)**

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

This Agreement (this "Agreement") is made and entered into by and between Travis County, Texas, a political subdivision of the State of Texas (the "County") and Goetting and Associates, Inc., a Texas corporation (the "Consultant") (each a "Party" and collectively the "Parties").

The County desires to obtain Commissioning services for the 416 West 11<sup>th</sup> Street Office Building and Parking Structure (the "Project"); and

The Consultant has the professional ability and expertise to fulfill the requirements of the Project, and;

This Agreement is exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(4) of the Local Government Code as this is a contract for professional services.

In consideration of the mutual covenants and agreements set forth herein, the amount and sufficiency of which are acknowledged, the County and the Consultant agree as follows:

**SECTION 1  
EMPLOYMENT OF THE CONSULTANT**

- 1.1 The Director of the Travis County Facilities Management Department (the "Director") has designated a primary Project representative to act on behalf of County with respect to the work to be performed under this Agreement (the "County Project Manager"). The County Project Manager, in consultation with the Director, has the authority to interpret and define County's policies and decisions with respect to Consultant's services. The County Project Manager may designate representatives to transmit instructions and receive information. The County Project Manager will supervise the performance of Consultant's services under this Agreement. Consultant must cooperate fully with the County Project Manager in the performance of services under this Agreement.
- 1.2 County is contracting with Consultant as an independent contractor. Consultant shall perform professional commissioning services as described in this Agreement. If any dispute arises under this Agreement, Consultant and the County Project Manager specifically agree to make a good faith effort to resolve the dispute directly between them. If they are unable to resolve the matter to Consultant's satisfaction, Consultant may appeal the dispute by following the procedures described in Paragraph 11.9 of this Agreement.
- 1.3 County will provide Consultant convenient access to all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relating to existing facilities and to the Project. Consultant shall make copies of needed information and promptly return all originals. The cost of such copies will be a reimbursable expense.

Consultant shall return his copies of this material to County upon completion of the Project, if the County Project Manager instructs the Consultant to do so.

- 1.4 County cannot and does not warrant or guarantee the accuracy of all information that it provides to Consultant. Consultant may rely on professional sealed documents to the extent that the original professional would have been held liable for the information contained in those documents, in accordance with industry standard practice. Information provided in record or as-built documents that is critical to the current design work should be field-verified by Consultant in accordance with his professional judgment. Consultant may rely on other Project information provided by County, such as program data or design criteria, in accordance with industry standards, unless this Agreement provides otherwise.
- 1.5 If the County Project Manager observes or otherwise becomes aware of any fault or defect in the Work Product, as defined in Section 7, the County Project Manager will give prompt written notice of the fault or defect to Consultant. Consultant shall correct any such fault or defect at no cost to County.
- 1.6 The Travis County Commissioners Court orders this Agreement for professional services exempt from the County Purchasing Act pursuant to Texas Local Government Code § 262.024(4) as an item for procurement of professional services.
- 1.7 Project Management; Key Personnel. Consultant shall provide management for the Project in accordance with the Organizational Chart set forth as **Appendix B**, attached hereto and made a part hereof. Personnel included in the Organizational Chart shall be considered "Key Personnel" for purposes of this Project. Except in the event that the Key Personnel individual is no longer employed by (or otherwise under the direction and control of) Consultant, none of the Key Personnel may be withdrawn from the Project without County's prior written approval; provided, however, Consultant shall have the right to change Key Personnel if Consultant complies with the following conditions: (1) Consultant provides County with at least fifteen (15) business days prior written notice that Consultant intends to replace a Key Personnel individual; (2) the notice is accompanied by a copy of the resume of any proposed replacement Key Personnel, together with documentation demonstrating that the proposed replacement has equal or greater experience and qualifications than the original Key Personnel individual; and (3) Consultant permits County to interview the proposed replacement Key Personnel individual for the purpose of satisfying itself that the proposed replacement is acceptable. County will notify Consultant within seven (7) calendar days of conducting the interview of any objection to the proposed replacement, and will either request additional assurances regarding the proposed replacement or require Consultant to submit the name and qualifications of another replacement Key Personnel individual. Such process will continue until Consultant proposes a replacement Key Personnel individual acceptable to County. County agrees not to unreasonably withhold such acceptance. In the event a Key Personnel individual leaves the employment of Consultant unexpectedly and without advance notice, Consultant will immediately notify County upon learning of the departure and will comply with the requirements of this section.

**SECTION 2  
BASIC SERVICES OF THE CONSULTANT**

- 2.1 The Consultant shall be responsible for managing the pre-design, design, construction, and closeout phases of the work described herein, and shall prepare or manage preparation of the Work Product, as defined herein, which shall be acceptable to the Project Manager. The Consultant shall also serve as the County's professional consultant in those phases of the Project to which this Agreement applies and shall consult with and give advice to the County during the Project.
- 2.2 The Consultant shall perform the "Basic Services," which shall mean:
- 2.2.1 all elements of labor, materials and equipment required for managing the Project, which shall be rendered to the satisfaction of the Project Manager and the Commissioners Court and in accordance with the requirements, policies, and standard practices of Travis County;
  - 2.2.2 the detailed Scope of Services for the Project, set forth in Appendix A, attached hereto and made a part hereof (the "Scope of Services");
  - 2.2.3 the Work Product, as defined herein, which the Consultant shall submit to the County for review and acceptance.
  - 2.2.4 the Work Product, as defined herein, which the Consultant shall submit to the County for review at regular intervals, as specified in the Project Schedule to be provided by the Consultant, attached hereto as Exhibit 3 and made a part hereof.
- 2.3 The Consultant shall use and comply with all applicable codes as adopted by authority having jurisdiction in performing the Basic Services for the Project. The standards, codes, specifications, or other technical, design or professional requirements applying to this Project shall be the latest edition with amendments as adopted by the Authorities Having Jurisdiction ("AHJ's") in effect on the date on which this Agreement is executed, unless the Consultant and the County expressly agree otherwise.

**SECTION 3  
RESERVED**

**SECTION 4  
COMPENSATION AND PAYMENT SCHEDULE**

- 4.1 In consideration of the Consultant performance of the Basic Services, the Consultant shall receive the Basic Services compensation described in Exhibit 1, attached hereto and made a part hereof. The Basic Services compensation shall be paid in accordance with the payment schedule set forth in Exhibit 1.

- 4.2 For the performance of services not specifically described in the Basic Services (the "Additional Services"), the Consultant shall receive the Additional Services compensation described in Exhibit 1.
- 4.3 The County Project Manager will have authority to classify Consultant's services as "Basic" or "Additional" services under this Agreement. The Project Manager may make this classification in consultation with the Director. In the event Consultant disagrees with the classification designated by the County Project Manager (and, if applicable, the Director), and those individuals are unable to resolve the disagreement directly, Consultant may refer the dispute to the Purchasing Agent, who will follow the procedures described in Paragraph 11.9.

## **SECTION 5 PERIOD OF SERVICE**

- 5.1 The Consultant shall perform the professional services described herein, whether "Basic" or "Additional" services, in accordance with the Project Schedule. The Project Schedule that is attached hereto as Exhibit 3 (and made a part hereof for all purposes) will form the basis for any future adjustments to the Project Schedule. The Project Schedule development and management is a primary responsibility of the Consultant. Changes in the actual, compared to the scheduled, duration of the project over which the Consultant has no control may be considered as a basis for time extension and consequent "Additional Services" compensation.
- 5.2 This Agreement shall become effective on the Effective Date, as defined herein, and shall remain in full force and effect through Project closeout, unless sooner terminated as provided for herein. All time limits stated in this Agreement are of the essence.
- 5.3 If the performance by Consultant or the County of either party's obligations hereunder is interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof. Upon the discovery of such an event, the party whose performance is affected under this section shall notify the other party, and a special meeting shall be called by the Project Manager to propose a program for a solution to the problem, and, if necessary, to establish an estimated period of time of suspension or extension of the Project Schedule. A written request for an extension of time, when properly documented and justified by the circumstances, may be granted by the Project Manager.

## **SECTION 6 COORDINATION WITH COUNTY**

- 6.1 The Travis County Purchasing Agent (the "Purchasing Agent") acts as County's overall contract administrator. The Purchasing Agent may designate representatives to transmit and receive information. Consultant shall not commence work until the County Project Manager has thoroughly briefed Consultant on the scope of the Project. Consultant shall

not commence work on the Project until receipt of a written notice to proceed issued by the Purchasing Agent upon the recommendation of the Director (the "Notice to Proceed"). Consultant shall not commence work on any subsequent phase of the Project, as such phases are described in the Scope of Services, until receipt of a written Notice to Proceed, which will be issued by the Purchasing Agent, upon the recommendation of the Director. The Purchasing Agent will issue all Notices to Proceed subsequent Project phases.

- 6.2 At the beginning of each Project phase, and before written authorization to proceed with that phase is issued, Consultant shall submit to the County Project Manager the Project Schedule, as updated and adjusted as required for each phase. In addition, Consultant shall make monthly progress reports with comparisons to the Project Schedule.
- 6.3 In addition to Consultant's obligations described in the Scope of Services pertaining to meetings, at intervals not to exceed thirty (30) days, Consultant shall arrange for and attend progress meetings with County representatives and, as applicable, representatives of any other governmental authority having jurisdiction over the Project, to explain and receive feedback on the work-in-progress.
- 6.4 Consultant shall furnish all available data and reasonable assistance necessary to comply with established application, review, and approval processes for any permits, grants, or planning advances required for the Project. Consultant shall familiarize himself, and comply, with established application, review, and approval processes as necessary to ensure that reasonable compliance will cause no delay to the Project Schedule.
- 6.5 For the duration of the Agreement term, Consultant shall be responsible for advising County whether in Consultant's judgment it is feasible to proceed with the Project given any constraints affecting the Project.
- 6.6 Consultant shall cooperate and coordinate with County's staff and other consultants and contractors as reasonable and necessary in performance of this Agreement and as required by the Director, the County Project Manager, and the Purchasing Agent.

## **SECTION 7 WORK PRODUCT**

- 7.1 The term "Work Product" shall mean any reports, studies, narratives, presentation materials, analyses and other documents created, obtained or assembled in connection with performance of this Agreement and with the services rendered in connection with the Project, including but not limited to any and all deliverables for each phase of the Project as described in the Scope of Services. Work Product also includes all other miscellaneous documentation needed to manage the Project, as outlined in the Scope of Services and in accordance with industry standard practices.
- 7.2 Consultant shall submit the Work Product for each phase of the Project on or before the dates specified in the Project Schedule. Upon receipt of the Work Product, County will check the submission for completion. A "Complete" submission means that all items listed, referenced and otherwise described in this Agreement relating to that phase of the Project have been included.

- 7.3 If the submission is Complete, County will notify Consultant and County's Technical Review Process, as defined in this Section, will begin. If the submission is incomplete, County will notify Consultant, who shall perform any professional services that are required to complete the Work Product for that phase. Consultant shall then resubmit the Work Product to County.
- 7.4 County's "Technical Review Process" means County's review of the Complete Work Product for substantial compliance with the technical specifications and requirements included in the Basic Services. If necessary, County will return the Complete Work Product to Consultant, who shall perform any professional services required for such compliance and resubmit the Complete Work Product to County.
- 7.5 The process described in paragraph 7.3 and 7.4 will be repeated until the Work Product is accepted by County. "Acceptance" means that in the County Project Manager's opinion, substantial compliance with the technical specifications and requirements has been achieved.
- 7.6 After Acceptance, Consultant shall perform any required modifications, corrections, redesigns, and additional work as requested by County and any other governmental entities having jurisdiction over the Project and as necessary to receive final approval by the County Project Manager. "Approval" means formal written recognition by County that the Work Product for that phase is Complete and that compliance with the technical specifications and requirements has been fully achieved.
- 7.7 The County Project Manager will have authority to classify Consultant's services as "Complete", "Accepted", or "Approved" under this Agreement. The County Project Manager may make this classification in consultation with the Director. In the event Consultant disagrees with the classification designated by the County Project Manager (and, if applicable, the Director), and those individuals are unable to resolve the disagreement directly, Consultant may refer the dispute to the Purchasing Agent, who will follow the procedures described in Paragraph 11.9.

## **SECTION 8 REVISION TO WORK PRODUCT**

- 8.1 After Approval by County of the Work Product for each Project phase, Consultant shall, without additional compensation, perform any professional services required as a result of Consultant's development of the Work Product that County has found to be in error or omission. In addition, if it is necessary to revise the Work Product in order to make the Project constructible, Consultant shall do so without additional compensation. However, after Approval by County, any revisions, additions, or other modifications made at County's request for the convenience of County that require Consultant to perform extra services and incur additional expenses will entitle Consultant to additional compensation for such extra services and expenses. This compensation will be paid as Additional Services in accordance with Exhibits 1 and 2. Consultant must obtain County's written authorization for Additional Services in advance in accordance with Exhibit 1.

**SECTION 9  
REIMBURSABLE EXPENSES**

- 9.1 "Reimbursable Expenses" shall mean expenses in addition to the compensation for Basic Services or Additional Services set forth in Exhibits 1 and 2, and shall include actual expenditures made by the Consultant in the interest of the Project for the items listed below:
- 9.1.1 Expense of postage and copying as required by County (not for the in-house use of the Consultant).
- 9.1.2 Expense of review and permitting fees as required by governmental authorities having jurisdiction over the Project.
- 9.2 Unless this Agreement has been amended or modified as provided herein, at no time shall the payments made for each of the above-listed categories of Reimbursable Expenses exceed the amount shown in Exhibit 1.
- 9.3 Payment of Reimbursable Expenses shall be made monthly upon presentation of the Consultant's statement of expenses incurred. Receipts for all reimbursable expenses shall be submitted with each invoice. The County does not reimburse for sales taxes paid by the Consultant. The Consultant may obtain a Tax Exempt Certificate from the Travis County Purchasing Office.

**SECTION 10  
SUSPENSION AND TERMINATION OF AGREEMENT**

- 10.1 **SUSPENSION.** County may suspend performance of this Agreement at any time for any reason without terminating this Agreement by giving Consultant written Notice of Suspension (a "Notice of Suspension"). The "Effective Date of Suspension" will be the date on which Consultant receives the Notice of Suspension, and the Suspension Period will begin on this date. Performance may be reinstated and this Agreement resumed in full force and effect within sixty (60) days of Consultant's receipt of written notice of reinstatement from County. Upon the Effective Date of Suspension, Consultant shall follow the procedures described below:
- 10.1.1 Upon receipt of a Notice of Suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall prepare a statement detailing the services performed under this Agreement prior to the Effective Date of Suspension. Consultant shall prepare copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the Effective Date of Suspension, including but not limited to the Work Product, for possible delivery to County upon County's request.

10.1.2 During the Suspension Period, Consultant may submit the above-referenced statement to County for payment of the approved services actually performed under this Agreement, less previous payments.

10.2 **TERMINATION FOR CONVENIENCE.** County reserves the right to terminate this Agreement for reasons other than default by Consultant, including for any reason deemed by Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order, by delivering to Consultant a written notice (a "Notice of Termination for Convenience"), which will take effect on the tenth day following receipt by Consultant ("Termination for Convenience"). In the event of Termination for Convenience, County and its officials, agents and representatives will not be liable for loss of any profits.

10.2.1 Upon receipt of a Notice of Termination for Convenience and prior to the effective date of termination, Consultant shall, unless the Notice of Termination for Convenience otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of a Notice of Termination for Convenience, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.

10.2.2 Consultant shall deliver to County copies of all completed or partially completed designs, plans, specifications and other Work Product prepared under this Agreement prior to the effective date of termination as a precondition to any final payment due under this Agreement.

10.2.3 Upon satisfaction of the above conditions, County will pay Consultant for approved services actually performed under this Agreement prior to termination, less previous payments.

10.2.4 Consultant's failure to submit the required statement described in paragraph 10.2.1 and to comply with the above stated conditions will constitute a waiver by Consultant of any and all rights or claims to collect the fee to which Consultant may rightfully be entitled for services performed under this Agreement.

10.3 **TERMINATION FOR DEFAULT.** Either Party may terminate this Agreement for the failure of the other Party to perform any provisions of this Agreement, through no fault of the terminating Party ("Termination for Default") by delivering written notice of termination (a "Notice of Termination for Default") to the defaulting Party. The Notice of Termination for Default shall take effect on the tenth day following receipt by the defaulting Party. In the event of Termination for Default, County and its officials, agents and representatives will not be liable for loss of any profits.

**Termination by Consultant:**

- 10.3.1 In the event Consultant exercises its right to terminate for default by County, within thirty (30) days after receipt by County of Consultant's Notice of Termination for Default, Consultant shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
- 10.3.2 Consultant shall deliver to County copies of all completed or partially completed designs, plans, specifications and other Work Product prepared under this Agreement prior to the effective date of termination as a precondition to any final payment due under this Agreement.
- 10.3.3 Upon satisfaction of the above conditions, County will pay Consultant for approved services actually performed under this Agreement prior to termination, less previous payments.
- 10.3.4 Consultant's failure to submit the required statement described in paragraph 10.3.1 and to comply with the above stated conditions will constitute a waiver by Consultant of any and all rights or claims to collect the fee to which Consultant may rightfully be entitled for services performed under this Agreement.

Termination by County:

- 10.3.5 Upon receipt by Consultant of a Notice of Termination for Default and prior to the effective date of termination, Consultant shall, unless the Notice of Termination otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of a Notice of Termination for Default, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.
- 10.3.6 Consultant shall deliver to County copies of all completed or partially completed designs, plans, specifications and other Work Product prepared under this Agreement prior to the effective date of termination as a precondition to any final payment due under this Agreement.
- 10.3.7 Upon satisfaction of the above conditions, County will pay Consultant for approved services actually performed under this Agreement prior to termination, less previous payments.
- 10.3.8 Consultant's failure to submit the required statement described in paragraph 10.3.5 and to comply with the above stated conditions will constitute a waiver by Consultant of any and all rights or claims to collect the fee to which Consultant may rightfully be entitled for services performed under this Agreement.

- 10.4 All references to time in this Agreement will be measured in calendar days unless otherwise specified.

**SECTION 11  
CONSULTANT'S RESPONSIBILITY AND LIABILITY**

- 11.1 The Consultant covenants to undertake no task in which a professional license, registration or certificate is required unless the Consultant or someone under the Consultant's direction is appropriately licensed. Thus, any member of the Consultant's Project Team who will be performing professional services under this Agreement shall be appropriately licensed or registered, in accordance with Texas law. In the event such licensed individual's license expires, is revoked, or is canceled, the Consultant shall inform the County of such event within five (5) working days.
- 11.2 The Consultant shall be responsible for conformance with applicable federal, state and local laws, including City of Austin permitting requirements, and City ordinances currently in effect.
- 11.3 Acceptance and Approval of the Work Product by the County shall not release the Consultant of any responsibility or liability for the accuracy and competency of such Work Product prepared and delivered under this Agreement. Neither Acceptance nor Approval by the County shall be an assumption of responsibility or liability by the County for any defect, error, or omission in the Work Product prepared by the Consultant.
- 11.4 Notwithstanding anything in this Agreement to the contrary, the Consultant shall perform all services and responsibilities required of the Consultant under this Agreement using at least that standard of care which a reasonably prudent Consultant in Travis County, Texas, would use in similar circumstances. The Consultant shall perform the duties set forth in this Agreement in a good and workmanlike manner and nothing in this Agreement shall be construed to relieve the Consultant of this duty.
- 11.5 Any employee of the Consultant, who in the opinion of the County is incompetent or whose conduct becomes detrimental to the work or coordination with the County, shall upon the County's request be immediately removed from association with the Project.
- 11.6 Any architect or engineer performing services under this Agreement shall place his Texas Professional architect's or engineer's seal of endorsement on all architectural documents and engineering data furnished to the County, as required by law.
- 11.7 Consultant is an independent contractor under this Agreement. Neither the Consultant nor any officer, agent, servant or employee of the Consultant shall be classified as an employee or servant of County.
- 11.8 **INDEMNIFICATION.** THE CONSULTANT AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AND ITS OFFICIALS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, SUITS, AND LIABILITY OF ANY KIND WHETHER MERITORIOUS OR NOT, INCLUDING WITHOUT LIMITATION ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S

FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENT ACT, NEGLIGENT ERROR OR NEGLIGENT OMISSION OF THE CONSULTANT OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS ON ACCOUNT OF, ARISING OR RESULTING FROM , DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF THIS AGREEMENT.

11.8.1 If any claim, or other action, that relates to the Consultant's performance under this Agreement, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against the Consultant, the Consultant shall give written notice to County of the following information:

- (i) the existence of the claim, or other action, within ten (10) working days after being notified of it;
- (ii) the name and address of the person, firm, corporation, or other entity that made a claim, or that instituted any type of action or proceeding;
- (iii) the alleged basis of the claim, action or proceeding;
- (iv) the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
- (v) the name or names of any person against whom this claim is being made.

11.8.2 Except as otherwise directed, the Consultant shall furnish to County copies of all pertinent papers received by the Consultant with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

11.9 CONTRACT ADMINISTRATION; UNRESOLVED DISPUTES. The Purchasing Agent acts as the County representative in the administration of this Agreement. In case of an unresolved dispute, any document, notice, or correspondence not issued by or to the Purchasing Agent, or other authorized County person, is void unless otherwise stated in this Agreement. If Consultant does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, relating to the unresolved dispute, Consultant must submit a written notice to the Purchasing Agent, or other authorized County person, within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. Consultant may finally appeal the decision of the Purchasing Agent, in writing, to the Travis County Commissioners Court, whose decision shall be final and binding.

## SECTION 12 OWNERSHIP OF DOCUMENTS

12.1 The Consultant shall furnish the County with Work Product as requested, whether or not they are complete at the end of the Project, or upon suspension or termination of this Agreement,

as provided herein. The Consultant shall have the right to retain copies of the Work Product for its records.

- 12.2 The Work Product, and any other documents, including estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by the Consultant in performance of this Agreement, together with all intellectual property and proprietary rights in and to all such documents, shall upon creation become the sole and exclusive property of the County and upon completion of the Project shall be delivered to the County in an organized fashion with the Consultant retaining a copy.
- 12.3 Any reuse by the Consultant of any such documents described in paragraphs 12.1 and 12.2 without the specific and prior written consent of the County shall be at the Consultant's sole risk and without liability or legal exposure to the County. Should this Agreement be terminated prior to completion of the Project, the Consultant shall not be liable for the County's use of partially completed Work Product on this Project or any other Project.
- 12.4 The Consultant shall not be responsible for any use or any modifications to the documents described in paragraphs 12.1 and 12.2 performed by any other entity, without the specific written consent of the Consultant.

### **SECTION 13 MAINTENANCE OF AND RIGHT OF ACCESS TO RECORDS**

- 13.1 The Consultant agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, together with documentation of evaluations and study results for a period of five years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
- 13.2 The Consultant further agrees that the County or its duly authorized representatives shall have access to any and all books, documents, papers and records of the Consultant, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

### **SECTION 14 MISCELLANEOUS**

- 14.1 **VENUE.** This Agreement is governed by and shall be construed in accordance with the laws of the United States of America and the State of Texas, and all obligations under this Agreement are performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.
- 14.2 **SEVERABILITY.** If any portion or portions of this Agreement are ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.

- 14.3 EQUAL OPPORTUNITY IN EMPLOYMENT. The Consultant agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit 4, attached hereto and made a part hereof.
- 14.4 CERTIFICATE OF CONSULTANT. The Consultant certifies that neither the Consultant nor any members of the Consultant's firm has:
- 14.4.1 Employed or retained for a commission, percentage, brokerage, contingency fee, or other consideration, any firm or person (other than a bonafide employee working solely for the Consultant) to solicit or secure the services provided by this Agreement.
  - 14.4.2 Agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person other than in connection with carrying out the services to be performed under this Agreement.
  - 14.4.3 Paid or agreed to pay to any firm, organization, or person (other than bonafide employees working solely for the Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the services provided under this Agreement.
  - 14.4.4 The Consultant further agrees that this certification may be furnished to any local, state or federal governmental agencies in connection with this Agreement and for those portions of the Project involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.
- 14.5 NOTICE. Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the party to whom the notice is given, or on the third day following mailing if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address set forth in this section.

The address of the County for all purposes under this Agreement, unless such notice is specifically directed otherwise, shall be:

COUNTY:           Cyd V. Grimes, C.P.M., CPPO (or successor)  
                      Travis County Purchasing Agent  
                      P.O. Box 1748  
                      Austin, Texas. 78767

with copies to (registered or certified mail with return receipt is not required):

Roger El Khoury, M.S., P.E., Director  
Travis County Facilities Management Department  
P.O. Box 1748  
Austin, Texas 78767

The address of the Consultant for all purposes under this Agreement, unless such notice is specifically directed otherwise, shall be:

Goetting and Associates, Inc.  
12710 Research Blvd., Suite 355  
Austin, Texas 78759

14.6 **INSURANCE REQUIREMENTS.** The Consultant agrees during the performance of the services under this Agreement to comply with the insurance requirements set forth in Exhibit 4, attached hereto and made a part hereof.

14.7 **FORFEITURE OF AGREEMENT.** Consultant shall forfeit all benefits of this Agreement and County will retain all performance by Consultant and recover all consideration, or the value of all consideration, paid to Consultant pursuant to this Agreement if:

- (i) Consultant was doing business at the time of submitting its Qualifications Statement or had done business during the 365-day period immediately prior to the date on which its Qualifications Statement was due with one or more Key Contracting Persons; or
- (ii) Consultant does business with a Key Contracting Person after the date on which the Qualifications Statement that resulted in this Agreement and prior to full performance of this Agreement.

14.7.1 "Was doing business" and "has done business" mean:

- (a) Paying or receiving in any calendar year any money valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
- (b) Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;

but does not include:

- (c) any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public;
- (d) any financial services product sold to a Key Contracting Person for personal, family, or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Consultant in the ordinary course of its business; or
- (e) a transaction for a financial service or insurance coverage made on behalf of Consultant if Consultant is a national or multinational corporation by an agent, employee or other representative of Consultant who does not know and is not in a position that he or she should have known about this Agreement.

14.7.2 "Key Contracting Person" means any person or business listed in listed in Attachment 1 to Exhibit 6.

14.8 PURCHASE ORDER. The Consultant and its contractors, subcontractors and vendors shall provide goods and services using the purchase order method. A purchase order number will be assigned by the designated representative of the Travis County Purchasing Office. The Consultant and its contractors, subcontractors and vendors shall reference the Agreement number and the purchase order number on all invoices to the Travis County Office of Emergency Services. The terms and conditions contained elsewhere in this Agreement shall prevail over different or contrary terms in any purchase order. All invoices submitted by the Consultant and its contractors, subcontractors and vendors shall reference the purchase order number on the invoice. The County will not pay invoices that are in excess of the amount authorized by the purchase order.

14.9 PAYMENTS. Payment shall be made by check or warrant by upon satisfactory delivery and acceptance of items and submission of invoice to the address below for orders placed by the Purchasing Agent, as indicated on Purchase Orders.

Travis County Facilities Management Department  
P.O. Box 1748  
Austin, Texas 78767

In order to be considered "correct and complete," an invoice must include at least the following information:

- 14.9.1 name, address, and telephone number of Consultant and similar information in the event payment is to be made to a different address;
- 14.9.2 County Agreement, Purchase Order, or Delivery Order number;
- 14.9.3 identification of items or services as outlined in the Agreement;
- 14.9.4 quantity or quantities, applicable unit prices, total prices, and total amount, and
- 14.9.5 any additional payment information that may be called for by this Agreement.

Consultant shall also submit a statement with each invoice showing the percentage completion of the work to date, as well as any additional written information requested by County to document the progress of the work.

14.10 DISBURSEMENTS TO PERSONS WITH OUTSTANDING DEBTS PROHIBITED. In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of Consultant to the State, County or a salary fund, a warrant may not be drawn on a County fund in favor of Consultant, or an agent or assignee of Consultant until:

14.10.1 the County Treasurer notifies Consultant in writing that the debt is outstanding; and

14.10.2 the debt is paid.

14.10.3 "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with County.

14.10.4 County may apply any funds County owes Consultant to the outstanding balance of debt for which notice is made under section 14.10 above, if the notice includes a statement that the amount owed by County to Consultant may be applied to reduce the outstanding debt.

14.11 INTEREST ON OVERDUE PAYMENTS. Chapter 2251 of the Texas Government Code will govern accrual and payment of interest on overdue payments.

14.12 PROPERTY TAXES. Notwithstanding anything to the contrary herein, if the Consultant is delinquent in the payment of property taxes at the time of providing the services rendered under this Agreement, the Consultant hereby assigns any payments to be made for services rendered hereunder to the Travis County Tax Assessor-Collector for the payment of said delinquent taxes.

14.13 TAXPAYER IDENTIFICATION. The Consultant shall provide the County with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations, and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.

14.14 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the County and the Consultant and its respective successors, executors, administrators, and assigns. Neither the County nor the Consultant may assign, sublet, or transfer their interest in or obligations under this Agreement without the written consent of the other party hereto. IT IS EXPRESSLY ACKNOWLEDGED THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.

14.15 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PROGRAM REPORTING REQUIREMENTS.

14.15.1 HUB Program Requirements

14.15.1.1 In consideration of award of this Agreement to the Consultant, the Consultant agrees to maintain a subconsultant relationship with any HUB Subconsultants identified on the HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION Form provided with the Consultant's Qualifications Statement and attached hereto as Exhibit 7 and made a part hereof. The Consultant will make good faith efforts to meet or exceed the HUB participation goals in the Professional Services category for an overall 15.8% of the Contract Sum for Minority-Owned Business Enterprises (MBE) and an Overall 15.8% of the Contract Sum for Woman-Owned Business Enterprises (WBE) (*Sub-goals: 1.9% African-American, 9.0% Hispanic-American, 4.9% Native/Asian-American*). For

purposes of this Agreement, all references to "HUB" shall mean "certified HUB." To be considered as a "certified HUB," the subcontractor must have been certified by, and hold a current and valid certification with, any of the following three agencies: (1) The State of Texas; (2) the City of Austin; or (3) the Texas Unified Certification Program. Minimum good faith efforts include, to the extent practical and consistent with standard and prudent industry practices, the following:

- (a) dividing the Work into the smallest feasible portions, to allow for maximum HUB subcontractor participation;
- (b) providing to HUBs that exhibited genuine interest in bidding on a subcontract adequate information regarding the Project (i.e. plans, specifications, scope of work, bonding and insurance requirements and a point of contact within Consultant's organization);
- (c) notifying, in writing, three or more HUBs for each scope of work, allowing no less than five working days prior to bid submission, of the planned work to be subcontracted;
- (d) providing notice of opportunities to minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the information to their members/participants.

14.15.1.2 The Consultant may go beyond the good faith efforts listed above when soliciting HUB subcontractors.

#### 14.15.2 Subcontractor Tracking Software System.

14.15.2.1 The Travis County Purchasing Office has implemented an electronic subcontracting reporting system, or VTS, to assist the Travis County Purchasing Office in monitoring, tracking and reporting payments to Subcontractors/subconsultants. The County understands and believes, based on discussions with representatives of the System vendor and review of documentation accompanying the System, that: (i) the System provides a paperless environment in which transactions are electronically stored and routed; "Payment" and "Payment Verification" alerts are provided by e-mail and fax; (ii) the System will facilitate electronic Subcontractor/subconsultant diversity management, which in turn will improve auditing while cutting costs and shortening the audit cycle from months to hours; (iii) the System will eliminate standard forms and streamline the current manual process of tracking payments to all first-tier Subcontractors/subconsultants by performing all such tracking procedures electronically; and (iv) the System will serve as a tool to improve efficiency, accountability, data accuracy, transparency, and overall communication.

14.15.2.2 The Consultant shall designate, and shall require all Subcontractors/subconsultants to designate, a liaison responsible for handling all VTS reporting. On a monthly basis, the Consultant shall record and submit electronically payments made to all Subcontractors/subconsultants for Work completed through the end of the previous pay period; such electronic recording

and submission shall be completed no later than the 15<sup>th</sup> day after such payments are made. The Consultant shall contractually require all Subcontractors/subconsultants to verify payments by entering such payment data in the System no later than 10 days following the day on which the Consultant enters the Subcontractor/subconsultant payment information as required herein. The Consultant shall attempt to resolve any payment discrepancies or disputes in good faith. The Consultant shall not receive credit towards the HUB, M/WBE and DBE participation goals until reported payments have been verified by entering the payment data into the System as described herein or by providing to the County payment documentation satisfactory to the County.

14.15.2.3 The Consultant shall report payment information pertaining to each Subcontractor/subconsultant that includes, but is not limited to, business name, certification status, work assignment, original subcontract sum, payment number, percentage and dollars paid during the reporting period. A "Comment" field is available for entering additional information and comments and includes the ability to attach documents.

14.15.2.4 Failure by the Consultant to furnish the information required of it described in this paragraph 14.15.2 may result in cancellation of the contract award and contract termination in accordance with the procedures set forth in this Agreement. Additionally, if the Consultant is determined to be in default of these mandatory reporting requirements, it may have such conduct considered against it, in assessment of responsibility, in the evaluation of future contracts with the County.

14.15.2.5 The Consultant shall register, and shall contractually require all Subcontractors/subconsultants to register, with a username and password. Training on how to use the System will be provided by Travis County Purchasing Office HUB staff.

14.15.2.6 The County understands and believes that the VTS will assist the County in ensuring compliance with the County's HUB Program, and will allow County staff to closely monitor the Consultant and all Subcontractors/subconsultants performing Work on the Project. Travis County Purchasing Office HUB staff will conduct periodic post-award compliance reviews to verify that Subcontractors/subconsultants listed by the Consultant performed the work and received payment.

14.15.2.7 During the term of this Agreement, the Consultant is encouraged to inform the County of any problems anticipated or encountered, and of any other concerns, regarding the utilization of HUBs, M/WBEs and DBEs.

14.15.2.8 Other information tracked by the System includes increases or decreases in Subcontractor/subconsultant Work assignments, percentage of goal achieved, and substitutions. When substituting a Subcontractor/subconsultant, the Consultant is highly encouraged to utilize HUBs, M/WBEs and DBEs. The Consultant shall notify the County of any substitutions or changes to

Subcontractors/subconsultants in accordance with the procedures described in the System. Such notice shall be sent electronically to the Purchasing Agent or HUB Program Coordinator. The Consultant may be requested to provide evidence that it made a good faith effort to substitute another HUB, M/WBE or DBE Subcontractor/subconsultant but was unable to do so. Approval turnaround time will be within 24 – 48 hours. If the Consultant has difficulty in locating HUB, M/WBE or DBE Subcontractors/subconsultants, it should contact the Travis County Purchasing Office HUB staff at (512) 854-9700.

14.15.2.9 The County understands and believes that other notifications automatically generated by the VTS include the following: User Registration/Password, Contract Award Notifications, Audit Reminders, Unresponsive HUB Subcontractors, Discrepancy Notifications, HUB Subcontractor Change Requests, Payment Verifications, Vendor Information Verification Notices, Not Meeting the Goals Notification and Contract Closeout. Some notifications listed may include response deadlines.

14.15.2.10 The County encourages the fostering of mentor/protégé relationships through the Community Mentor Protégé Initiative, and Travis County Purchasing Office HUB staff will cooperate with and assist the Consultant in initiating and/or developing such efforts.

14.16 FUNDING OUT. Despite anything to the contrary in this Agreement, if, during budget planning and adoption, the Commissioners Court fails to provide funding for this Agreement for the following fiscal year of Travis County, County may terminate this Agreement after giving Consultant thirty (30) days written notice that this Agreement is terminated due to the failure to fund it.

14.17 NON-WAIVER OF DEFAULT. No payment, act or omission by the County may constitute or be construed as a waiver of any breach or default of the Consultant which then exists or may subsequently exist. All rights of the County under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or title to the County under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, except as expressly provided herein, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

14.18 MEDIATION. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or person appointed by a court of competent jurisdiction for mediation as described in the Tex. Civ. Prac. And Rem. Code, 154.023. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in Tex. Civ. Prac. and Rem. Code Section 154.073, unless both parties agree, in writing, to waive the confidentiality.

14.19 OFFICIALS NOT TO BENEFIT. If a member of the Commissioners Court belongs to a

cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

**14.20 CONSULTANT CERTIFICATIONS:**

14.20.1 Consultant certifies that Consultant (i) is a duly qualified and capable business entity , (ii) is not in receivership and does not contemplate same, and (iii) has not filed for bankruptcy, and is not currently delinquent with respect to payment of property taxes within Travis County.

14.20.2 Consultant further represents and warrants that (i) all applicable copyrights, patents and licenses and other proprietary or intellectual property rights which may exist on materials used in this Agreement have been adhered to and (ii) the County shall not be liable for any infringement of those rights and any rights granted to the County shall apply for the duration of this Agreement. Consultant shall indemnify the County, its officers, agents and employees from all claims, losses, damages, causes of action and liability of every kind including expenses of litigation, and court costs and attorney fees for damages to any person or property arising in connection with any alleged or actual infringement of existing patents, licenses of copyrights applicable to materials used in this Agreement.

14.21 CIVIL RIGHTS/ADA COMPLIANCE. The Consultant shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] as if the Consultant were an entity bound to comply with these laws. The Consultant shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.

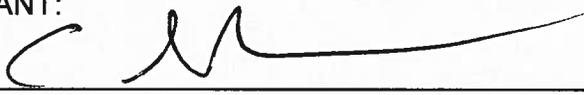
14.22 GRATUITIES. The County may terminate this Agreement if it is found that gratuities of any kind, including entertainment, or gifts were offered or given by the Consultant or any agent or representative of the Consultant, to any County Official or employee with a view toward securing favorable treatment with respect to this Agreement. If this Agreement is terminated by the County pursuant to this provision, the County shall be entitled, in addition to any other rights and remedies, to recover from the Consultant at least three times the cost incurred by Consultant in providing the gratuities.

14.23 MONITORING. The County reserves the right to perform periodic on-site monitoring of the Consultant's compliance with the terms of this Agreement and of the adequacy and timeliness of the Consultant's performance under this Agreement. After each monitoring visit, the County shall provide the Consultant with a written report of the monitor's findings. If the report notes deficiencies in the Consultant's performances under the terms of this Agreement, it shall include requirements and deadlines for the correction of those deficiencies by the Consultant. The Consultant shall take action specified in the monitoring report prior to the deadlines specified.

- 14.24 INCORPORATION OF EXHIBITS AND ATTACHMENTS. All of the exhibits, attachments, and appendices referred to in this Agreement are incorporated by reference as if set forth verbatim herein.
- 14.25 ENTIRE AGREEMENT. This Agreement represents the entire and integrated Agreement between the County and the Consultant and supersedes all prior negotiations, representations, or agreements, either oral or written.
- 14.26 TEXAS PUBLIC INFORMATION ACT. Notwithstanding any provision in this Agreement to the contrary, disclosure of any information obtained by County or any of its officials, employees, agents or representatives in connection with this Agreement shall be subject to the provisions of the Texas Public Information Act and all legal authorities relating thereto, including but not limited to opinions, decisions and letter rulings issued by the State Attorney's General Office.
- 14.27 CERTIFICATION OF ELIGIBILITY. This provision applies if the Total Agreement Sum specified in Exhibit 1 exceeds \$25,000. Consultant certifies that at the time of submission, Consultant was not on the federal government's list of suspended, ineligible, or debarred contractors. If Consultant has been placed on the list between the time of submission of its Qualifications Statement and contract award, Consultant shall notify the Purchasing Agent. If Consultant fails to do so, County may terminate this Agreement for default.
- 14.28 AMENDMENT. The Parties may amend this Agreement only by written instrument signed by both Parties. CONSULTANT EXPRESSLY ACKNOWLEDGES THAT NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO MODIFY OR AMEND THE TERMS OF THIS AGREEMENT UNLESS THE COMMISSIONERS COURT HAS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY.
- 14.29 ENTITY STATUS. By my signature below, I certify that Consultant is a Texas corporation, duly incorporated under Texas law and doing business in the State of Texas.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the later date set forth below (the "Effective Date").

CONSULTANT:

By: 

Printed Name: ERIC WORKMAN

Title: Principal

Date: 4/1/14

TRAVIS COUNTY:

By: \_\_\_\_\_  
Samuel T. Biscoe  
Travis County Judge

Date: \_\_\_\_\_

AVAILABILITY OF FUNDS CONFIRMED:

By: \_\_\_\_\_  
Niccoli Riley  
Travis County Auditor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Cyd V. Grimes, C.P.M., CPPO  
Travis County Purchasing Agent

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Assistant County Attorney

**EXHIBIT 1**  
**COMPENSATION FOR PROFESSIONAL SERVICES AND SCHEDULE OF PAYMENTS**

**SECTION 1 – COMPENSATION FOR BASIC SERVICES**

1.1 The fixed fee for the performance of the Basic Services will be the sum of **\$70,000.00**.

1.1.1 Unless the Parties have amended or modified this Agreement as provided in this Agreement, the payments for the phases described below will be:

(i)	Commissioning Services	<b><u>\$70,000.00</u></b>
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**TOTAL: \$70,000.00**

**SECTION 2 - FIXED FEE**

2.1 Consultant and County acknowledge the fact that the fixed fee is the total cost of the Basic Services to be rendered under this Agreement. This fixed fee is based upon the labor and non-labor costs, set forth in Exhibit 2 and described above, required in the performance of the various phases of work provided for under this Agreement.

**SECTION 3 – COMPENSATION FOR ADDITIONAL SERVICES**

3.1 “Additional Services” are defined as any services performed by Consultant not specifically described in the Basic Services (Section 2 of this Agreement).

3.2 For the performance of the Additional Services, County will pay Consultant under a written amendment to this Agreement; provided, however, that the performance of any Additional Services must be authorized in advance in writing by the Purchasing Agent upon the recommendation of the County Project Manager.

3.3 The basis of compensation for the services of principals and employees engaged in the performance of the Additional Services will be the hourly rates set forth in Exhibit 2.

3.4. County will compensate Consultant for the Additional Services unless the work comprising the Additional Services was made necessary by Consultant’s errors or omissions, in which case County will not compensate Consultant.

**SECTION 4 – REIMBURSABLE EXPENSES**

4.1 County will reimburse Consultant for non-labor expenses and a subcontract management fee incurred in the performance of the Basic Services under this Agreement, both of which

are at invoice cost. Detailed requirements for Reimbursable Expenses are outlined in Section 9, Reimbursable Expenses.

REIMBURSABLES TOTAL NOT TO EXCEED: \$3,000.00

**SECTION 5 –TOTAL AGREEMENT SUM**

5.1 The Total Professional Services Agreement Sum, consisting of the Compensation for Basic Services fixed fee of **\$70,000.00**, plus the Not-to-Exceed Reimbursable Expenses Total specified in paragraph 4.1, above, of **\$3,000.00**, will not exceed **\$73,000.00**.

**SECTION 6 –SCHEDULE OF PAYMENTS**

6.1 Payments will be made on a monthly basis for work performed, as described in detail in the Scope of Services, within thirty (30) days of receipt of a correct and complete invoice, as defined in paragraph 14.10, by the Facilities Management Department.

**EXHIBIT 2**  
**HOURLY RATES**

<b>Senior Principal</b>	<b>\$220.00</b>
<b>Principal</b>	<b>\$175.00</b>
<b>Project Manager</b>	<b>\$135.00</b>
<b>Project/Senior Engineer</b>	<b>\$115.00</b>
<b>Construction Administrator</b>	<b>\$90.00</b>
<b>Engineer</b>	<b>\$90.00</b>
<b>Designer</b>	<b>\$75.00</b>
<b>CADD Operator</b>	<b>\$60.00</b>
<b>Word Processing/Clerical</b>	<b>\$55.00</b>

**EXHIBIT 3**  
**PROJECT SCHEDULE**

- A. Consultant shall provide a detailed schedule of services, including a list of tasks and accompanying Work Product, to be performed for each phase described in the Scope of Services (the "Project Schedule"). At the beginning of each phase, the County Project Manager and Consultant will update and adjust the details of the Project Schedule and accompanying Work Product as may be required for each phase. The Project Schedule must allow sufficient time for the development of the Work Product in each phase to a level of quality and standard of completeness consistent with normal professional practice. The Project Schedule must also allow sufficient time for the County's Technical Review Process.
- A.1 Consultant shall provide and maintain sufficient Project staffing levels necessary to produce the work in a timely and efficient manner consistent with the Project Schedule.
- A.2 The Project Schedule must be updated in the event that:
1. any County approval or decision is not made within the time frame specified in the Project Schedule;
  2. County makes a written request for a revision in the Work Product that is inconsistent with written approval or instructions previously given by County and due to causes beyond the reasonable control of Consultant;
  3. a force majeure event has occurred; and
  4. Consultant has not performed in accordance with the latest Project Schedule.
- A.3 If Consultant falls behind the Project Schedule by two or more weeks, then Consultant shall present the County Project Manager with a recovery plan that sets forth the remedial actions to be taken by Consultant. At its sole option, the County may withhold all or part of any payment due to Consultant until the Project Schedule is recovered.
- B. This Agreement will become effective upon the Effective Date and will remain in full force and effect until the Project Completion Date.
- C. Consultant shall complete all design work described in this Agreement, and shall submit its Work Product for all phases as described in the Scope of Services in accordance with the Project Schedule, Attachment 1 to Exhibit 3.



**EXHIBIT 4**  
**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Consultant will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of the Consultant's obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Consultant will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provision of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor.
- E. The Consultant will furnish, upon written request, all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Consultant's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Consultant will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Consultant

becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the COUNTY or Federal Agency the Consultant may request the COUNTY and United States to enter into such litigation to protect the interest of the United States.

**EXHIBIT 5**  
**INSURANCE REQUIREMENTS**

During the life of this Agreement, Consultant 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 \$400,000 per occurrence and \$1,000,000 in the aggregate, including coverage on the same for independent subcontractor(s). TRAVIS COUNTY MUST 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 \$400,000 per occurrence and \$1,000,000 in the aggregate. Consultant 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 \$1,000,000.

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

The required insurance must be written by a company approved to do business in the State of Texas at the time the policy is issued. Consultant shall furnish County with a certification of coverage issued by the insurer. The insurance company will be subject to County's approval. Consultant must not cause any insurance to be canceled or permit any insurance to lapse. ALL INSURANCE CERTIFICATES MUST INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY WILL 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.

**EXHIBIT 6  
ETHICS AFFIDAVIT**

STATE OF TEXAS }  
COUNTY OF TRAVIS }

Date: APRIL 7, 2014  
Name of Affiant: ERIC WORKMAN  
Title of Affiant: PRINCIPAL  
Business Name of Consultant: TIG ENGINEERS  
County of Consultant: TRAVIS

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Consultant to make this affidavit for Consultant.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. Consultant has received the list of Key Contracting Persons associated with this Agreement, which is attached to this affidavit as Attachment 1.
5. Affiant has personally read Attachment 1 to this Affidavit.
6. Affiant has no knowledge of any Key Contracting Person on Attachment 1 with whom Consultant is doing business or has done business during the 365 day period immediately before the date of this Affidavit.

*[Handwritten Signature]*

Signature of Affiant

12710 RESEARCH BLD. SUITE 355

AUSTIN, TX 78759

Address

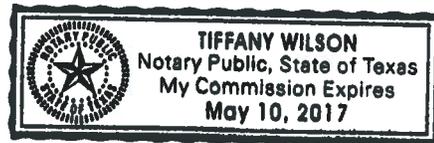
SUBSCRIBED AND SWORN TO before me by ERIC WORKMAN on APRIL 7th, 2014

Notary Public, State of TEXAS

TIFFANY WILSON

Typed or printed name of notary

My commission expires: MAY 10, 2017



**ATTACHMENT 1 TO EXHIBIT 6**  
**LIST OF KEY CONTRACTING PERSONS**  
**March 7, 2014**

**CURRENT**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
County Judge .....	Samuel T. Biscoe	
County Judge (Spouse).....	Donalyn Thompson-Biscoe	
Executive Assistant .....	Cheryl Brown	
Executive Assistant .....	Melissa Velasquez	
Executive Assistant .....	Josie Z. Zavala	
Executive Assistant .....	David Salazar	
Commissioner, Precinct 1 .....	Ron Davis	
Commissioner, Precinct 1 (Spouse).....	Annie Davis	Seton Hospital
Executive Assistant .....	Deone Wilhite	
Executive Assistant .....	Felicitas Chavez	
Commissioner, Precinct 2 .....	Bruce Todd*	
Commissioner, Precinct 2 (Spouse).....	Elizabeth Christian	Consultant
Executive Assistant .....	Sara Krause*	
Executive Assistant .....	Joe Hon	
Executive Assistant .....	Peter Einhorn	
Commissioner, Precinct 3 .....	Gerald Daugherty*	
Commissioner, Precinct 3 (Spouse).....	Charyl Daugherty	Consultant
Executive Assistant .....	Bob Moore*	
Executive Assistant .....	Martin Zamzow*	
Executive Assistant .....	Madison A. Gessner*	
Commissioner, Precinct 4 .....	Margaret Gomez	
Executive Assistant .....	Edith Moreida	
Executive Assistant .....	Norma Guerra	
County Treasurer .....	Dolores Ortega-Carter	
County Auditor .....	Nicki Riley	
County Executive, Administrative.....	Vacant	
County Executive, Planning & Budget .....	Leslie Browder	
County Executive, Emergency Services .....	Danny Hobby	
County Executive, Health/Human Services .....	Sherri E. Fleming	
County Executive, TNR .....	Steven M. Manilla, P.E.	
County Executive, Justice & Public Safety.....	Roger Jefferies	
Director, Facilities Management.....	Roger El Khoury, M.S., P.E.	
Interim Chief Information Officer .....	Tanya Acevedo	
Director, Records Mgmt & Communications ..	Steven Broberg	
Travis County Attorney .....	David Escamilla	
First Assistant County Attorney .....	Steve Capelle	
Executive Assistant, County Attorney .....	James Collins	
Director, Land Use Division.....	Tom Nuckols	
Attorney, Land Use Division .....	Julie Joe	
Attorney, Land Use Division.....	Christopher Gilmore	
Director, Transactions Division .....	John Hille	
Attorney, Transactions Division.....	Daniel Bradford	
Attorney, Transactions Division.....	Elizabeth Winn	
Attorney, Transactions Division.....	Mary Etta Gerhardt	
Attorney, Transactions Division.....	Barbara Wilson	
Attorney, Transactions Division.....	Jim Connolly	
Attorney, Transactions Division.....	Tenley Aldredge	
Director, Health Services Division .....	Beth Devery	

Attorney, Health Services Division .....Prema Gregerson  
 Purchasing Agent .....Cyd Grimes, C.P.M., CPPO  
 Assistant Purchasing Agent .....Marvin Brice, CPPB  
 Assistant Purchasing Agent .....Bonnie Floyd, CPPO, CPPB, CTPM  
 Purchasing Agent Assistant IV .....CW Bruner, CTP  
 Purchasing Agent Assistant IV .....Lee Perry  
 Purchasing Agent Assistant IV .....Jason Walker  
 Purchasing Agent Assistant IV .....Richard Villareal  
 Purchasing Agent Assistant IV .....Patrick Strittmatter  
 Purchasing Agent Assistant IV .....Lori Clyde, CPPO, CPPB  
 Purchasing Agent Assistant IV .....Scott Wilson, CPPB  
 Purchasing Agent Assistant IV .....Jorge Talavera, CPPO, CPPB  
 Purchasing Agent Assistant IV .....Loren Breland, CPPB  
 Purchasing Agent Assistant IV .....John E. Pena, CTPM  
 Purchasing Agent Assistant IV .....Rosalinda Garcia  
 Purchasing Agent Assistant IV .....Angel Gomez  
 Purchasing Agent Assistant III .....Shannon Pleasant, CTPM  
 Purchasing Agent Assistant III .....David Walch  
 Purchasing Agent Assistant III .....Michael Long, CPPB  
 Purchasing Agent Assistant III .....Jesse Herrera, CTP, CTPM, CTCM  
 Purchasing Agent Assistant III .....Sydney Ceder  
 Purchasing Agent Assistant III .....Ruena Victorino\*  
 Purchasing Agent Assistant III .....Rachel Fishback\*  
 Purchasing Agent Assistant II .....Vacant  
 Purchasing Agent Assistant II .....L. Wade Laursen  
 Purchasing Agent Assistant II .....Sam Francis  
 HUB Coordinator .....Sylvia Lopez  
 HUB Specialist .....Betty Chapa  
 HUB Specialist .....Jerome Guerrero  
 Purchasing Business Analyst .....Scott Worthington  
 Purchasing Business Analyst .....Vacant  
 Facilities Management .....Ken Gaede

**FORMER EMPLOYEES**

Position Held	Name of Individual Holding Office/Position	Date of Expiration
Commissioner, Precinct 2	Sarah Eckhardt	05/ 31/14
Purchasing Agent Assistant III	Nancy Barchus, CPPB	06/28/14
Purchasing Business Analyst	Jennifer Francis	11/29/14
Executive Assistant	Barbara Smith	01/15/15

\* - Identifies employees who have been in that position less than a year.

**EXHIBIT 7**

**HUB DECLARATION AND LIST OF CERTIFIED HUB SUBCONTRACTORS**

**HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION**

The primary objective of the Travis County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the County's procurement process. This fact holds true for Services (Professional & Non-professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified HUB Contractors/Vendors. It is the policy of the Travis County Purchasing Office to ensure a good faith effort is made to assist Certified HUB vendors and contractors in receiving contracts in accordance with the HUB Program policies and the Minority and Woman-Owned Business goals adopted by the Travis County Commissioners Court. Our goals for HUB contractor/vendor participation, as well as HUB subcontractor participation for this project are as follows:

**Overall MBE Goal: 16.5%; Sub-goals: 1.7% African-American; 9.5% Hispanic; 0.6% Native American; 4.7%Asian American**  
**Overall WBE Goal: 14.2%**

To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification, with any of the three agencies listed below. Please attach copy of certificate.

Vendor/Contractor: Goetting & Associates, Inc.

Certified as a HUB or an MBE/WBE/DBE source:  Yes  No HUB Status (Gender & Ethnicity): \_\_\_\_\_

If yes, by whom:  State of Texas Building and Procurement Commission  City of Austin  Texas Unified Certification Program

**SUGGESTED DATABASE DIRECTORIES TO VIEW WHEN SOLICITING HUB SUBCONTRACTORS**

State: [www.tbpc.state.tx.us/embl](http://www.tbpc.state.tx.us/embl); City: [www.ci.austin.tx.us/purchasing](http://www.ci.austin.tx.us/purchasing); TUCP: [www.tucp.org](http://www.tucp.org)

**LIST OF CERTIFIED HUB SUBCONTRACTORS**  
**(DUPLICATE AS NECESSARY)**

What percentage of the Bid or Proposal is to be subcontracted with Certified HUB sources: 0 % (List HUB Subcontractor information below).

HUB Subcontractor Name: N/A HUB Status (Gender & Ethnicity): \_\_\_\_\_

Certifying Agency (Check all applicable):  Texas Building and Procurement Commission  City of Austin  Texas Unified Certification Program

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_ Phone No.: (\_\_\_\_) \_\_\_\_\_

Subcontract Amount: \$u \_\_\_\_\_ Description of Work to be Performed: \_\_\_\_\_

HUB Subcontractor Name: \_\_\_\_\_ HUB Status (Gender & Ethnicity): \_\_\_\_\_

Certifying Agency (Check all applicable):  Texas Building and Procurement Commission  City of Austin  Texas Unified Certification Program

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_ Phone No.: (\_\_\_\_) \_\_\_\_\_

Subcontract Amount: \$u \_\_\_\_\_ Description of Work to be Performed: \_\_\_\_\_

HUB Subcontractor Name: \_\_\_\_\_ HUB Status (Gender & Ethnicity): \_\_\_\_\_

Certifying Agency (Check all applicable):  Texas Building and Procurement Commission  City of Austin  Texas Unified Certification Program

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_ Phone No.: (\_\_\_\_) \_\_\_\_\_

Subcontract Amount: \$u \_\_\_\_\_ Description of Work to be Performed: \_\_\_\_\_

## **APPENDIX A**

### **SCOPE OF SERVICES**

#### **BUILDING ENHANCED COMMISSIONING SERVICES**

##### **1.0 THE PROJECT SITE**

- 1.1 In November 2012, Travis County purchased the 0.5 acre property located at 416 W. 11<sup>th</sup> Street, at the northwest corner of San Antonio and 11<sup>th</sup> streets in downtown Austin, Texas. In October, 2013, Page Southerland Page was selected as the Architect-of-Record for the new Travis County District Attorney Office Building. This property is being developed as a seven-story, 133,500 GSF office building with a four-level, underground, 75,000 GSF 150-space parking structure for a combined total project area of 208,500 GSF (the "New Office Building"). The New Office Building is intended to serve the space needs through 2035 of the District Attorney's Office. The building structure and envelope will be designed for an extended life of 75 years. In accordance with the Travis County "Green Building Policy", this New Office Building must seek LEED Silver certification at a minimum. The New Office Building project scope also includes a secure staff access tunnel to connect this building with the Criminal Justice Center across 11<sup>th</sup> Street.
- 1.2 The New Office Building will include approximately 103,000 Net Occupiable Square Feet (NOSF) of office suites with staff and support spaces, organized according to operational units, including private offices, open offices, conference and other types of meeting and team work rooms, media room, copy/print rooms, file rooms, storage rooms for evidence, supplies, and equipment, server room, reception and waiting areas, staff break rooms, and a 900 SF shared conference room (Building Amenity). The building will also include primary circulation, vertical circulation and services spaces.
- 1.3 The County's Construction Manager at Risk (CMAR) is Flintco. CMAR will be referred to herein as "Contractor".

##### **2.0 SCOPE OF SERVICES**

- 2.1 The Consultant's "Basic Services" to be performed in connection with the New Office Building will be provided in accordance with the fundamental and enhanced LEED requirements, and the standards set forth in the National Environmental Balancing Bureau (NEBB) Commissioning Procedural Standards. The Consultant (otherwise known as the "Commissioning Agent" or "CxA"), under Basic Services, will verify that the building's energy related systems are installed, calibrated and perform according to the County's project requirements (OPR), basis of design (BOD), and construction documents (CDs). The scope of basic commissioning services will include:

###### **A. Design Phase**

1. Develop and maintain a Commissioning Plan.

2. Review the Owner's Project Requirements (OPR) and Basis of Design (BOD). OPR and BOD are being provided by others under separate contracts.
3. Participate with A/E in developing and incorporating commissioning requirements into the construction commissioning specification section.
4. Perform a design and specification review at 50% and 95%, and attend two (2) design review meetings to address Cx review comments.

**B. Construction Phase**

1. Perform a Commissioning kickoff meeting to review the Commissioning Plan and commissioning responsibilities with the contractor.
2. Develop, with Owner and A/E, an Occupant Comfort Survey in accordance with LEED IEQc7.2, Thermal Comfort Verification. Lead development of a corrective action plan in case more than 20% of occupants are dissatisfied with any item on the survey and include this corrective action plan with Commissioning Report and Systems Manuals.
3. Perform at least one (1) submittal review for the commissioned systems and associated controls. Designer of record has final approval.
4. Perform field visits to inspect commissioned systems installation during the construction phase.
5. Develop and perform Pre-Functional Test (PFT) to verify commissioned systems installation and start-up. Commissioning authority will perform PFT for major systems (i.e. Chillers, Air Handlers, Pumps, etc.) with Contractor assistance for access and operation. Contractors will be responsible for PFT for minor typical systems (Terminal Units, Fan Coil Units, etc.). Commissioning authority will verify 20% of the PFT performed by Contractor for acceptable compliance.
6. Develop and perform Functional Performance Test (FPT) to verify commissioned systems automated sequential performance. Commissioning authority will perform FPT for the systems with Contractor assistance for access and operation.
7. Create and maintain a Commissioning issues log and a separate testing record. Provide to County written progress reports and test results with recommended actions.
8. Review the Test and Balance (TAB) report for completeness and accuracy. Commissioning authority will witness the TAB contractor retest 20% of the airflow and hydronic values for repeatability within tolerance. Test and Balance report to be provided by others.
9. Verify training of the Owner's operating personnel for the commissioned systems.
10. Ensure that the commissioning plan meets LEED commissioning requirements (EA Prerequisite 1, Fundamental Building Systems Commissioning, and EAc3, Enhanced Commissioning).
11. Certified Commissioning Report – A written report that documents testing results of all commissioned systems. One (1) original hard copy and three (3) electronic copies will be provided. Additional copies will be provided at the owner's request.

12. Systems Manual – Includes copies of Cx system O&M manuals, blank testing scripts, as-built drawings, and recommendation for scheduled maintenance, calibration, and retesting activities.

C. Warranty Phase

1. Perform a field visit at 10 months after substantial completion to review operation of the commissioned systems.
2. Perform deferred testing (as necessary) for systems that could not be tested due to seasonal conditions or Project phasing.
3. Distribute Thermal Comfort Occupant Survey in accordance with LEED IEQc7.2, Thermal Comfort Verification. In collaboration with Owner, perform corrective systems actions in accordance with corrective action plan.

2.2 Consultant responsibilities: In addition to the duties described above, the CxA will have the following responsibilities and authority:

- A. Assist the County's Project Manager, who issues deficiency notices, with said issuance of deficiency notices and verify that they have been addressed and corrected. An Issues Log of all said deficiency notices will be maintained by the Consultant and reviewed at the commissioning meetings, which must be scheduled by the Consultant, when appropriate, to coincide with regular Project meetings. Deficiencies that are not corrected in a timely manner must be reported to the County by the Consultant.
- B. The CxA is not responsible for design concept, design criteria, compliance with codes, design or general construction scheduling, cost estimating, or construction management. The CxA may assist with problem-solving or resolving nonconformance or deficiencies, but ultimately that responsibility resides with the Contractor and the A/E. The primary role of the CxA is to develop and coordinate the execution of a testing plan, observe and document performance—that is, determine whether systems are functioning in accordance with the documented design intent and in accordance with the Contract Documents. The Contractor will provide all tools or the use of tools to start, check-out and functionally test equipment and systems.

2.3 Systems and Assemblies to be commissioned are:

1. HVAC systems and associated Building Automation Systems (BAS) Controls
2. Lighting and Daylighting Controls
3. Domestic Hot Water System
4. Renewable Energy (including solar photovoltaic and solar water heating, as applicable)
5. Emergency Power System. This is to consist of simulating an actual power “outage” to confirm proper operation of the emergency generator, ATS devices, HVAC restart, along with confirmation that all other life safety and emergency loads are correctly connected to the emergency system.

2.4 The following outlines the level of effort expected for each commissioned system:

- A. The CxA shall review the design documentation (design intent, basis of design and sequences of operation) for completeness. In particular, the assessment of the HVAC system will include an evaluation of the maintainability of the systems, capacity issues, and other items deemed relevant by the Owner. The CxA shall develop prefunctional checklists for the Installing Contractor to include in their startup and initial checkout. The CxA shall develop detailed written test procedures for guiding and documenting performance during functional testing.
- B. The functional testing must include operating the system and components through each of the written sequences of operation and other significant modes and sequences, including startup, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment. Sensors and actuators must be calibrated during prefunctional checklisting by the Installing Contractor and spot-checked by the commissioning authority during functional testing.
- C. Functional testing must be done using conventional manual methods, control system trend logs and read-outs or stand-alone dataloggers, to provide a high level of confidence in proper system function, as deemed appropriate by the commissioning authority and the Owner.

2.5 Systems not to be commissioned in this Scope of Services:

- 1. Electrical Systems, except those systems included under 2.4 above
- 2. Plumbing Systems, except those systems included under 2.4 above
- 3. Elevators
- 4. IT and telecommunications
- 5. Security Systems
- 6. Fire Protection
- 7. Fire Alarm
- 8. Building Envelope

**3.0 CONSTRUCTION CONTRACT ADMINISTRATION**

- 3.1 The Consultant will not have control or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures nor safety precautions and programs in connection with the Construction Work nor acts or omissions of the Contractor or Subcontractors of any tier; or any other persons performing any of the Construction Work, nor failure of any of the aforementioned to carry out the Construction Work in accordance with the Construction Contract Documents.
- 3.2 The Consultant will at all times have access to the Work.
- 3.3 Interpretations and decisions of the Consultant must be consistent with the intent of, and reasonably inferable, from the Contract Documents or Commissioning documents and must be in written and/or graphic form.
- 3.4 Reports, meeting minutes and any other documents must be prepared in Microsoft Word. Logs may be prepared in MSWord or in Microsoft Excel. Documents must be submitted in PDF format for electronic distribution.

**4.0 MEETINGS**

- 4.1 The Consultant shall attend meetings with the County during the Construction Contract Administration Phase. Attendance and participation at such meetings is part of the Basic Services. Any meetings not required by this agreement will be compensated at the hourly rate for the appropriate Consultant staff indicated in the Professional Services Agreement.

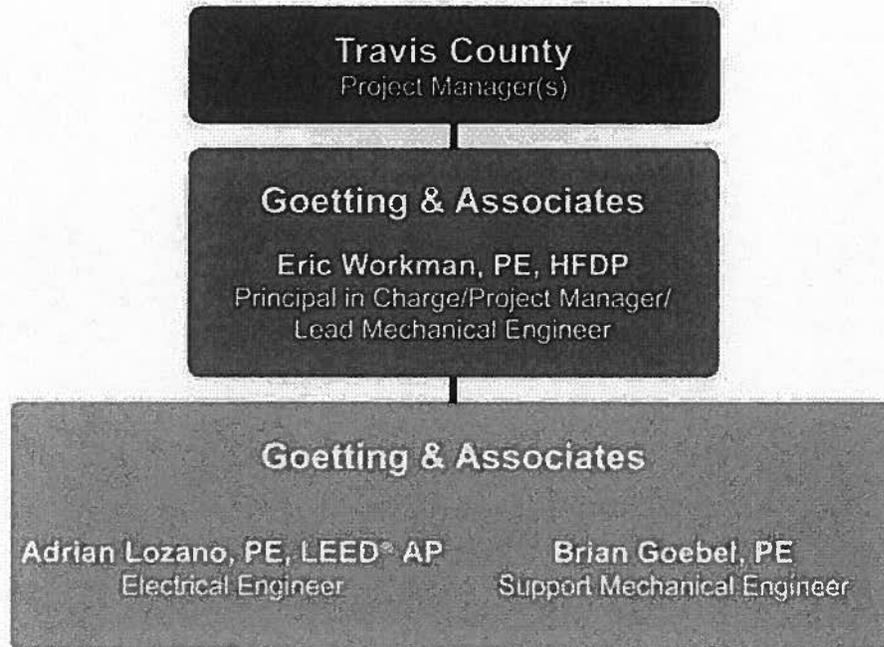
**5.0 SCHEDULE MILESTONES**

- 5.1 The Consultant's delivery of the Work Product must conform to the Project Schedule (Exhibit 3) and will commence upon receipt of a written Notice-to-Proceed from the County.

END OF EXHIBIT

**APPENDIX B**

**ORGANIZATIONAL CHART**





# FACILITIES MANAGEMENT DEPARTMENT

**Roger A. El Khoury, M.S., P.E., Director**

1010 Lavaca St. Suite 400 • P.O. Box 1748, Austin, Texas 78767 • Phone: (512) 854-9661 • Fax: (512) 854-9226

## MEMORANDUM

**FMD Project:** 416-01-14C-3N

**FILE:** 502

**TO:** Cyd V. Grimes, C.P.M., CPPO, Purchasing Agent

**FROM:** Roger A. El Khoury, M.S., P.E., Director

**DATE:** March 25, 2014

**SUBJECT:** Travis County District Attorney Office Building  
416 W. 11<sup>th</sup> Street  
Professional Services Procurement for Commissioning Services

A handwritten signature in blue ink that reads "Roger A. El Khoury".

Facilities Management Department (FMD) recommends award of contract to Goetting & Associates for professional building enhanced commissioning services for the new Travis County District Attorney Office Building to be located at 416 W. 11th Street, Austin, Texas. The attached proposal from Goetting & Associates has been reviewed and found to be fair and reasonable.

The proposed fee amount for the Basic Services is \$70,000. Reimbursable expenses are estimated to not exceed \$3,000 for a proposed total contract sum of \$73,000.00.

Funds for this contract are in Funds Center 1149000001, G/L account 522020 and are encumbered under Funds Reservation document #300001102. In accordance with the procedure to secure this PSA, this request is being forwarded along with the supporting documents for your approval. If approved, please issue a PSA to Goetting & Associates. If you have any questions or need additional information, please call Ken Gaede at 49894. Your consideration and approval of this professional services agreement contract award is appreciated.

### ATTACHMENT:

- 1) Scope of Services for Building Enhance Commissioning Services
- 2) Commissioning Proposal from Goetting & Associates

### COPY TO:

Leslie Browder, County Executive, Planning and Budget  
Marvin Brice, Assistant Purchasing Agent, Purchasing Office  
Richard Villareal, Purchasing Agent Assistant, Purchasing Office

RECEIVED  
TRAVIS COUNTY  
2014 MAR 27 PM 2:12  
PURCHASING  
OFFICE