

AGENDA ITEM 31

Review and consider approving professional services for Hall Bargainer to provide a mitigation plan for the Lake Creek Tributary #2 channel improvements project.

Moved: Commissioner Heiligenstein

Seconded: Commissioner Limmer

Motion: Motion: To approve additional professional services for Hall-Bargainer on Brushy Creek Regional Park System and conservation corridor projects to approve professional services for Hall Bargainer to provide a mitigation plan for the Lake Creek Tributary #2 channel improvements project.

Vote: 4 – 0 with Commissioner Hays absent from the dais.

< Attachment >

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Tuesday, January 08, 2002

Judge John Doerfler
Williamson County, Texas
701 Main St. Suite 201
Georgetown, Texas 78626

Re: Professional Landscape Architectural Services Agreement between Hall/Bargainer and
Williamson County, Georgetown, Texas.

Dear Judge John Doerfler,

Thank you for the opportunity to submit a proposal for landscape architectural services necessary for the preparation of a Mitigation Plan for Lake Creek Tributary #2 channel improvements project. This proposal is based upon our understanding of the project from our meetings with Athabasca Consulting, Inc., who is preparing the Corps of Engineers 404 permit for this project.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Philip A. Wanke", with a long horizontal flourish extending to the right.

Philip Wanke, ASLA
Principal
Hall/Bargainer, Inc.

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PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This Agreement is made and entered into this day by and between Williamson County, Texas, a political subdivision of the State of Texas, (*the "County"*) and *Hall/Bargainer, Inc., planners & landscape architects*, 400 W. Main, Suite 220, Round Rock, Texas 78664 (*the "Landscape Architect"*).

WHEREAS, *County* proposes to develop a conceptual park master plan at "The Chamberlin Tract", all within Williamson County, Texas;

WHEREAS, *County* desires to obtain professional services for "The Chamberlin Tract" Project, (*the "Project"*);

WHEREAS, *Landscape Architect* has the professional ability and expertise to fulfill the requirements of the *Project*, and to counsel *County* in the selection and analysis of cost-effective alternatives.

NOW, THEREFORE, *County* and *Landscape Architect* agree to the performance of the professional services by *Landscape Architect* and the payment for these services by *County* as set forth herein.

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Section I
Employment of the Landscape Architect

County agrees to employ *Landscape Architect* and *Landscape Architect* agrees to perform professional Landscape Architectural services for the *Project* as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the County Judge or his designee and/or agent as designated in the Scope of Services in Appendix A, or as otherwise designated (*individually or collectively the "County Judge"*). The *County Judge* shall have complete authority for the purpose of resolving technical matters. In all other cases, the decision of the Williamson County Commissioners Court shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

Section II
Basic Services of the Landscape Architect

- A. In consideration of the compensation herein provided, *Landscape Architect* shall perform professional Landscape Architectural services for the *Project*, which are acceptable to the *County Judge*, based on standard Landscape Architectural practices and the scope of work described on the Exhibits attached to this Agreement. *Landscape Architect* shall also serve as *County's* professional Landscape Architect in those phases of the *Project* to which this Agreement applies and will consult with and give advice to *County* during the performance of *Landscape Architect's* services.
 - B. *Landscape Architect* shall not commence work until *Landscape Architect* has been thoroughly briefed on the scope of the *Project* and has been notified in writing by the *County Judge* to proceed, as evidenced by a Work Authorization substantially in the form of Attachment A to Exhibit I.
 - C. *County* shall provide *Landscape Architect* with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular *Project* at no cost to *Landscape Architect*, however, any and all such information shall remain the property of *County* and shall be returned, if the *County Judge* so instructs *Landscape Architect*.
 - D. *Landscape Architect* shall perform the following Basic Scope of Services:
 - 1. The basic Scope of Services shall generally consist of all elements of work, materials and equipment required for the development of the *Project*, including any Public Hearings, satisfactory to the *County Judge* and the County's Commissioners Court, in accordance with the requirements, policies, and general practices of Williamson County.
 - 2. The following documents shall be used in the development of the *Project*:
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- a. TxDOT 1980 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, Revision 5, including:
 - i) The 1998 reprint of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways
 - ii) The September 31, 1998, Federal Highway Administration (FHWA) Mandate from the National Cooperative Highway Research Program (NCHRP), Report 350
 - b. Texas Department of Transportation Construction Manual
 - c. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 1993 (English units)
 - d. National Environmental Policy Act (NEPA)
 - e. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994
 - f. Americans with Disabilities Act (ADA) Regulations
 - g. U.S. Army Corps Regulations
 - h. Southern Building Code
 - i. Uniform Building Code. Note: Williamson County will use the 1997 Uniform Building Code (May 1, 1997) as a guide for design.
 - j. National Electrical Code (most current version)
 - k. Williamson County Bond Program Standard Procedures Manual
 - l. TxDOT Bridge Division Foundation Manual
3. As part of the Scope of Services, *Landscape Architect* shall submit its work products to *County* for review at regular intervals.
 4. The detailed Scope of Services for the *Project* is set forth herein as Appendix A to this Agreement, and is expressly incorporated and made a part hereof.

Section III Fee schedule

- A. For and in consideration of the performance by *Landscape Architect* of the work described in the Scope of Services, *County* shall pay and *Landscape Architect* shall receive the fee set forth in Exhibit I. The fee is based upon the hourly rates set forth in Exhibit II. Exhibits I and II are attached hereto and made a part hereof. Invoices shall be submitted by *Landscape Architect* on a monthly basis and are due upon presentation of all items required hereunder, and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- B. For the performance of services not specifically described in the Scope of Services *Landscape Architect* shall receive the additional services compensation described in Exhibit III, which is attached hereto and made a part hereof. In the event of any dispute over the classification of

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Landscape Architect's services as basic or additional services under this agreement, the decision of the *County Judge* shall be final and binding on *Landscape Architect*.

Section IV
Period of Service

- A. *Landscape Architect* shall perform the professional services described in Appendix A, the Scope of Services, in accordance with the Production Schedule attached hereto as Exhibit IV and made a part hereof.
 - B. This Agreement shall become effective upon the date approved by *County* and will remain in full force and effect for the period required for the design, construction contract award and construction of the *Project*, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. *Landscape Architect* shall complete all design work as described in the Scope of Services within 360 calendar days from receipt by *Landscape Architect* of *County's* written Work Authorization and in accordance with the production timeline included in the Scope of Services.
 - C. Neither *Landscape Architect* nor *County* shall be responsible for delays caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond *Landscape Architect's* or *County's* reasonable control. Upon the discovery of such an event, *Landscape Architect* shall notify *County*, and attend a special meeting with the *County Judge* 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 work. A written request for an extension of time, when properly documented and justified by the circumstances, will be granted by the *County Judge*.
 - D. *County* may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within sixty (60) days of receipt by *Landscape Architect* of written Notice of Reinstatement from *County*. *Landscape Architect*, upon receipt of a Notice of Suspension shall follow the procedures described in the attached Exhibit V, which is attached hereto and made a part hereof. In the event such suspension of the *Project* or the *Landscape Architect's* services hereunder extends for a period of ninety (90) days or more, consecutive or in the aggregate, *Landscape Architect* may terminate this Agreement in writing and such termination shall be treated as a Notice of Termination as provided herein.
 - E. Either party may terminate this Agreement for the substantial failure of the other party to perform in accordance with the terms of this Agreement (the substantiality of such failure to be based on standard Landscape Architectural practices and the scope of work described on the Exhibits attached to this Agreement), through no material fault of the terminating party, and *County* may terminate this Agreement for reasons other than substantial failure by *Landscape Architect* to perform by delivering a written Notice of Termination which shall
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take effect on the tenth day following receipt. If mutually agreed upon, the obligation to provide services under this Agreement may be terminated without cause upon thirty (30) days written notice. *Landscape Architect* shall follow the procedures specified in Exhibit V upon issuance or receipt of such notice. In the event of termination of this Agreement because of the substantial failure of *Landscape Architect* to perform, *County* may prosecute the work to completion by contract or otherwise and, in such a case, *Landscape Architect* shall be liable for any additional costs incurred by *County*.

- F. *Landscape Architect* specifically acknowledges that *County* will sustain damages for each day beyond the required dates of completion of the Preliminary and Design Phases as defined in the Scope of Services that the work has not been accepted and approved. Because of the impracticality and extreme difficulty of fixing and ascertaining *County's* actual damages, *Landscape Architect* agrees that 0.00 and No/100 Dollars (\$0.00) per day shall be retained by *County* from any amounts due *Landscape Architect* for every day that *Landscape Architect* does not meet the production requirements set forth in Exhibit IV.
- G. Periods of time (i) during which a Notice of Suspension is in effect, or (ii) during which a submitted and complete Landscape Architectural work product is in technical review, as described in Section VI, or (iii) during which a delay directly related to matters described in section IV(C) above, shall not be taken into account in computing the amount of liquidated damages. In the event that an Landscape Architectural work product received by *County* is found to be incomplete, as defined in Section VI, Paragraph B, the period of time from the original submittal of the Landscape Architectural work product to the receipt of subsequent submittal necessary to produce a completed submittal will be taken into account in computing the number of days and the amount of liquidated damages
- H. All references to time in this Agreement shall be measured in calendar days unless otherwise specified.

Section V Coordination with the County

- A. The *County Judge* will act on behalf of *County* with respect to the work to be performed under this Agreement. The *County Judge* shall have complete authority to interpret and define *County's* policies and decisions with respect to *Landscape Architect's* services. The *County Judge* may designate representatives to transmit instructions and receive information.
- B. *Landscape Architect* shall not commence work on any phase of the *Project* until a thorough briefing on the scope of the *Project* is received and a written Work Authorization is issued by the *County Judge* in substantially the form of Attachment A to Exhibit I.
- C. *Landscape Architect* shall furnish all available data and reasonable assistance necessary for the development of applications or supporting documentation for any permits, grants, or planning advances as applicable to the professional services to be rendered pursuant to this
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Agreement, provided that *Landscape Architect* shall not be obligated to develop additional data, appear at hearings, or prepare extensive reports, unless compensated for such work under other provisions of this Agreement.

- D. *Landscape Architect* shall have the responsibility at all times under the terms of this Agreement to advise *County* whether in *Landscape Architect's* judgment it is feasible to proceed with the recommendations given any constraints affecting the *Project*.
- E. *Landscape Architect* shall cooperate and coordinate with *County's* staff, and other Landscape Architects and contractors as reasonable and necessary and as required by the *County Judge*.

Section VI Review of Work Product

- A. *Landscape Architect's* Landscape Architectural work product will be reviewed by *County* under its applicable technical requirements and procedures.
- B. Reports, plans, specifications, and supporting documents, (the "Landscape Architectural work products"), shall be submitted by *Landscape Architect* on or before the dates specified in the Production Schedule set forth in Exhibit IV. Upon receipt of the Landscape Architectural work products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the scope of services described herein) have been included in the Landscape Architectural work products in compliance with the requirements of this Agreement. . The completeness of any Landscape Architectural work product submitted to *County* shall be determined by *County* within thirty (30) days of such submittal and *County* shall notify *Landscape Architect* in writing within such 30-day period if such work product has been found to be incomplete.
- C. If the submission is complete, *County* shall notify *Landscape Architect* and *County's* technical review process will begin.
- D. If the submission is incomplete, *County* shall notify *Landscape Architect*, who shall perform such professional services as are required to complete the work and resubmit it to *County*. This process shall be repeated until a submission is complete.
- E. *County* shall review the completed work for compliance with the scope of work. If necessary, the completed work shall be returned to *Landscape Architect*, who shall perform any required work and resubmit it to *County*. This process shall be repeated until the work is accepted. "Acceptance" shall mean that in the *County Judge's* opinion substantial compliance with the requirements of this Agreement has been achieved.
- F. After acceptance, *Landscape Architect* shall perform any required modifications, changes,

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alterations, corrections, redesigns, and additional work necessary to receive final approval by the *County Judge*. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.

- G. After approval of final Landscape Architectural work products, *Landscape Architect* shall without additional compensation perform any work required as a result of *Landscape Architect's* development of the products which is found to be in error or omission due to *Landscape Architect's* negligence. However, any work required or occasioned for the convenience of *County* after approval of a final product shall be paid for as Additional Services.
- H. In the event of any dispute over the classification of *Landscape Architect's* work products as complete, accepted, or approved under this Agreement, the decision of the *County Judge* shall be final and binding on *Landscape Architect*, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VII Revision to Work Product

Landscape Architect shall make without expense to *County* such revisions to the work product as may be required to correct negligent errors or omissions so the work product meets the needs of *County*, but after the approval of the work product any revisions, additions, or other modifications made at *County's* request which involve extra services and expenses to *Landscape Architect* shall entitle *Landscape Architect* to additional compensation for such extra services and expenses, provided however, that *Landscape Architect* agrees to perform any necessary corrections to the work products, which are found to be in negligent error or omission as a result of the *Landscape Architect's* development of the work product, at any time, without additional compensation. If it is necessary due to such error or omission by *Landscape Architect* to revise the plans in order to make the *Project* constructable, *Landscape Architect* shall do so without additional compensation. In the event of any dispute over the classification of *Landscape Architect's* services as Basic or Additional Services under this Agreement, the decision of the *County Judge* shall be final and binding on *Landscape Architect*, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

Section VIII Landscape Architect's Responsibility and Liability

- A. *Landscape Architect* covenants to undertake no task in which a professional license or certificate is required unless he or someone under his direction is appropriately licensed. In the event such licensed individual's license expires, is revoked, or is canceled, *Landscape Architect* shall inform *County* of such event within five working days.
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- B. *Landscape Architect* shall be responsible for conformance with applicable federal and state laws, county permitting requirements, and city ordinances currently in effect, except as otherwise directed by the *County Judge* regarding county permitting or similar requirements properly waivable by the *County Judge*.
 - C. Acceptance and approval of the final plans by *County* shall not release *Landscape Architect* of any responsibility or liability for the accuracy and competency of his designs, working drawings, specifications, or other documents or work performed under this Agreement. Neither acceptance nor approval by *County* shall be an assumption of responsibility or liability by *County* for any defect, error, or omission in the designs, working drawings, specifications, or other documents prepared by *Landscape Architect*.
 - D. *Landscape Architect* shall indemnify, protect, and save harmless *County*, its officials and employees and its agents and agents' employees from and against all claims, suits, actions, liability, loss, damage, attorney's fees, costs, and expenses (including, but not limited to expenses related to expert witnesses) of any kind whatsoever, to the extent arising from any negligent act, error or omission of *Landscape Architect* or any of its subcontractors in connection with the performance of services under this Agreement; provided, however, *Landscape Architect* shall not be responsible for the negligence of any other party, other than its subcontractors.
 - E. *Landscape Architect's* opinions of probable *Project* cost or construction cost represent *Landscape Architect's* professional judgment as a design professional familiar with the construction industry, but *Landscape Architect* does not guarantee that proposals, bids, or the construction cost, itself, will not vary from *Landscape Architect's* opinions of probable cost.
 - F. *Landscape Architect* shall perform all services and responsibilities required of *Landscape Architect* under this Agreement using at least that standard of care which a reasonably prudent Landscape Architect in Texas, who is licensed by the State Board of Landscape Architects, or the State Board of Registered Professional Surveyors, as applicable, would use in similar circumstances.
 - G. *Landscape Architect* represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for performance of the services required under this Agreement and that *Landscape Architect* shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the reasonable opinion of *County*, to perform the services when and as required and without delays. It is understood that *County* will approve assignment and release of all key *Landscape Architect* and professional personnel.
 - H. All employees of *Landscape Architect* shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of *Landscape Architect*, who in the opinion of *County* is incompetent or whose conduct becomes detrimental to the
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work or coordination with *County*, shall upon *County's* and/or *County Judge's* request be immediately removed from association with the *Project*.

- I. *Landscape Architect* shall furnish all equipment, transportation, supplies, and materials required for its operations under this Agreement.
- J. *Landscape Architect* shall place his Texas Professional Landscape Architect's seal of endorsement on all documents and Landscape Architectural data furnished to *County*, as required by law.
- K. *Landscape Architect* is an independent contractor under this Agreement. Neither he nor any officer, agent nor employee of *Landscape Architect* shall be classified as an employee of *County*.

Section IX Ownership of Documents

- A. Any and all documents, including the original drawings, estimates, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, field notes, and data prepared by *Landscape Architect* are the property of *County* and upon completion of the work or termination of this Agreement or as otherwise instructed by *County* and/or *County Judge*, shall be delivered to *County* in an organized fashion with *Landscape Architect* retaining a copy.
- B. Any reuse by *Landscape Architect* of any such documents described in subsection A above, without the specific written consent of *County* shall be at *Landscape Architect's* sole risk and without liability or legal exposure to *County*. Should *Landscape Architect* be terminated, *Landscape Architect* shall not be liable for *County's* use of partially completed designs, plans, or specifications on this *Project* or any other project, except to the extent such documents were deemed complete or otherwise "Accepted" or "Approved" as provided herein or represent completed work sealed by *Landscape Architect*, or Surveyor, as applicable, as specified by professional standards.
- C. *Landscape Architect* will not be responsible for any use or any modifications to the plans and documents described in subsection A performed by any entity other than Williamson County, and *County's* respective Landscape Architects and contractors, without the specific written consent of *Landscape Architect*.

Section X Maintenance of and Right of Access to Records

- A. *Landscape Architect* agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the *Project*, together with documentation of
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evaluations and study results for a period of three (3) years after final payment for completed services and all other pending matters concerning this Agreement have been closed.

- B. *Landscape Architect* further agrees that *County* or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of *Landscape Architect*, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. *Landscape Architect* agrees that *County* shall have access during normal working hours to all necessary *Landscape Architect* facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. *County* shall give *Landscape Architect* reasonable advance notice of intended audits.
- C. *Landscape Architect* further agrees to include in all its sub-consultant agreements hereunder a provision to the effect that the sub-consultant agrees that *County* shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such sub-consultant, involving transactions to the subcontract, and further, that *County* shall have access during normal working hours to all sub-consultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (D) hereof. *County* shall give sub-consultant reasonable advance notice of intended audits.
- D. *Landscape Architect* and sub-consultant agree to photocopy such documents as may be requested by *County*. *County* agrees to reimburse *Landscape Architect* for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

Section XI Miscellaneous

- A. *Severability*. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be limited to the clause, sentence, provision, paragraph or article so held to be invalid, illegal, or ineffective.
- B. *Venue*. It is contemplated that this Agreement shall be performed in Williamson County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
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- C. ***Equal Opportunity in Employment.*** *Landscape Architect* agrees, during the performance of the services under this Agreement, to comply with the equal opportunity in employment provisions cited in Exhibit VI, which is attached hereto and made a part hereof.
- D. ***Certificate of Landscape Architect.*** *Landscape Architect* certifies that neither *Landscape Architect* nor any members of *Landscape Architect's* firm has:
- (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 *Landscape Architect*) to solicit or secure the work provided by the Agreement.
 - (2) Agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
 - (3) Paid or agreed to pay to any firm, organization, or person (other than bonafide employees working solely for *Landscape Architect*) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.

Landscape Architect 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.

- E. ***Notice.*** Any notice to be given hereunder shall be in writing and may be affected by personal delivery in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

LANDSCAPE
ARCHITECT:

Hall/Bargainer, Inc.
400 West Main, Ste. 220
Round Rock, Texas 78664

COUNTY:

Williamson County (or successor)
Judge John Doerlfer
701 Main St. Suite 201
Georgetown, Texas 78626

with copy to:

Honorable Gene Taylor (or successor)
Williamson County Attorney

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Attn: File No.and to: _____

_____and to: _____

- F. **Insurance Requirements.** *Landscape Architect* agrees during the performance of the services under this Agreement to comply with the INSURANCE REQUIREMENTS provisions described in Exhibit VII, which is attached hereto and made a part hereof.
- G. **Property Taxes.** Notwithstanding anything to the contrary herein, to the extent *County* becomes aware that *Landscape Architect* is delinquent in the payment of property taxes related to property located in Williamson County at the time of invoicing, *Landscape Architect* hereby assigns any payments to be made for services rendered hereunder to the Williamson County Tax Assessor-Collector for the payment of said delinquent taxes. Notwithstanding the above, *County* shall not have an affirmative duty to determine if *Landscape Architect* is delinquent in the payment of property taxes.
- H. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of *County* and *Landscape Architect* and their respective successors, executors, administrators, and assigns. Neither *County* nor *Landscape Architect* may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other party hereto.
- I. **Bidding Exemption.** 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.
- J. **Taxpayer Identification.** *Landscape Architect* shall provide to *County Judge* upon submittal of *Landscape Architect's* initial invoice requesting payment 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.
- K. **Compliance with Laws.** *Landscape Architect* shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement,

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including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the *Landscape Architect* shall furnish the *County* with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

- L. ***Reports of Accidents.*** Within 24 hours after *Landscape Architect* becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the *Landscape Architect*), whether or not it results from or involves any action or failure to act by the *Landscape Architect* or any employee or agent of the *Landscape Architect* and which arises in any manner from the performance of this Agreement, the *Landscape Architect* shall send a written report of such accident or other event to the *County*, setting forth a full and concise statement of the facts pertaining thereto. The *Landscape Architect* shall also immediately send the *County* a copy of any summons, subpoena, notice, or other documents served upon the *Landscape Architect*, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the *Landscape Architect's* performance of work under this Agreement.
- M. ***Entire Agreement.*** This Agreement represents the entire and integrated Agreement between *County* and *Landscape Architect* and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both *County* and *Landscape Architect*. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COUNTY COMMISSIONERS COURT.
- N. ***Captions Not a Part Hereof.*** The captions or subtitles of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- O. ***Incorporation of Exhibits and Attachments.*** All of the Exhibits and Attachments, and Appendices referred to in the Agreement are incorporated by reference as if set forth verbatim herein.
- P. ***Entity Status.*** By my signature below, I certify that *Landscape Architect* is a corporation, duly authorized to transact and do business in the State of Texas.
- Q. ***Acknowledgement.*** As a duly authorized representative of *Landscape Architect*, I acknowledge by my signature below that I have read and understand the above paragraphs and that *Landscape Architect* has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.
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- R. **Definition of Landscape Architect.** The term "Landscape Architect" as used herein is defined as including Registered Professional Surveyors, as applicable to the work to be performed under this Agreement, and any reference to professional standards in regards to a Registered Professional Surveyor shall relate to those standards promulgated by the State Board of Registered Professional Surveyors.

EXECUTED this _____ day of _____, 2002.

THE LANDSCAPE ARCHITECT:

WILLIAMSON COUNTY:

BY: Philip A. WankeBY: John C. Daehler 1-8-02Printed Name: PHILIP A. WANKE

Williamson County Judge

Title: PRINCIPAL

Reviewed as to Form By: _____

County Attorney

Funds Verified By: _____

County Auditor

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EXHIBIT I**COMPENSATION FOR PROFESSIONAL SERVICES****ACTUAL COST OF SERVICES METHOD**

[Note: A separate Compensation Agreement will be attached for Compensation on a Work-Order Basis]

SECTION 1 - BASIS FOR COMPENSATION

- 1.1 The not-to-be-exceeded fee for the performance of the Scope of Services described in the Agreement shall be the sum of **\$9,600**.
- 1.2 The basis of compensation for the services of principals and employees engaged in the performance of the work shall be the hourly rates set forth in attached Exhibit II.
- 1.3 *Landscape Architect* shall be reimbursed for non-labor and subcontract expense incurred in the performance of the services under this Agreement at invoice cost.

SECTION 2 - NOT-TO-BE-EXCEEDED FEE

- 2.1 *Landscape Architect* and *County* acknowledge the fact that the not-to-be-exceeded fee is the total estimated costs of services to be rendered under this Agreement. This not-to-be-exceeded fee is based upon the labor and non-labor costs set forth in Exhibit II to this Agreement and described above, estimated to be required in the performance of the various phases of work provided for under this Agreement. Should the actual costs of the services rendered under this Agreement be less than such estimated cost, then *Landscape Architect* shall receive compensation for only those services actually rendered.

SECTION 3 - WORK AUTHORIZATIONS

- 3.1 *County* will prepare and issue Work Authorizations, in the form identified and attached hereto as Attachment A to authorize the *Landscape Architect* to perform one or more tasks. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, and a fee amount agreed upon by the *County* and *Landscape Architect*. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the *Landscape Architect's* responsibilities and obligations established in this Agreement. The executed Work Authorizations shall become part of this Agreement.

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- 5.4 Invoices requesting reimbursement for expenditures related to the project (reimbursables) must be accompanied by copies of the provider's invoice which was previously paid by *Landscape Architect*.
-

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ATTACHMENT A**WORK AUTHORIZATION NO. _____**

This Work Authorization is made pursuant to the terms and conditions of the Agreement entered into by and between Williamson County, Texas, a political subdivision of the State of Texas, (*the "County"*) and Hall/Bargainer, Inc., *planners & landscape architects*, 400 W. Main, Suite 220, Round Rock, Texas 78664 (*the "Landscape Architect"*).

Part 1. The *Landscape Architect* will provide the following Landscape Architectural services:

Scope of Work

Consultant shall provide park master planning and Texas Parks and Wildlife grant submittal services for the Chamberlin Tract, necessary for development of the above referenced project in Georgetown, Texas. It is the Consultants intent to work in effective cooperation with the Client to achieve an appropriate and efficient implementation of the project elements.

Conceptual park master plan, final master plan, grant preparation and submittal, as described under Basic Services.

Part 2. The maximum amount payable for services under this Work Authorization without modification is \$9,600.

Part 3. Payment to the *Landscape Architect* for the services established under this Work Authorization shall be made in accordance with the Agreement.

Part 4. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate upon the completion of the Basic Services, unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

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ATTACHMENT A (con't.)

Part 6. This Work Authorization is hereby accepted and acknowledged below.

LANDSCAPE ARCHITECT:

COUNTY:

Williamson County, Texas

By: _____

Signature

By: _____

Signature

Printed Name

Printed Name

Title

Title

Date

Date

LIST OF EXHIBITS

Exhibit A - Services to be Provided by County

Exhibit B - Services to be Provided by Landscape Architect

Exhibit C - Work Schedule

Exhibit D - Fee Schedule

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EXHIBIT A**Services to be Provided by County**

The Client shall attempt to provide full information regarding requirements for the project including:

A. Assistance

1. Knowledge of, and copy(s) of other consultant work adjacent to or affecting any areas of work included in this contract, in AutoCad format, if at all possible. For example road, utility, land acquisition, or potential development projects.
2. Assist the Consultant by placing at its disposal all available reports, plans, specifications, and other data relative to this project.
3. Examination of all studies, reports, sketches, estimates, specifications, drawings and other documents presented by the Consultant and shall render in writing responses pertaining to a reasonable amount of time so as not to delay the work of the Consultant.
4. Payment of all Permitting/Review Fees necessary for the successful completion of this Agreement.

B. Responsibilities

1. It is the Responsibility of the Client to provide the design team with complete and accurate information concerning known existing physical and legal conditions of the site that are beyond the scope of the professional services described in this document. Certain unusual or unforeseeable subsurface conditions not identifiable by surface topographic survey including, but not limited to, illegally dumped toxic or hazardous materials, abandoned building foundations or utility lines, excessive groundwater due to springs or other such features, or artifacts of archaeological or paleontological significance may materially alter the scope of the project in a manner not provided for in this contract.
 2. Likewise, active or pending legal disputes involving property Ownership, rights-of-way, environmental status, easement rights, governmental or departmental jurisdiction or similar matters may complicate the project in a manner that could not reasonable be anticipated at this time. Any change to the scope of the project required by such conditions as are listed above, or any duplication of services necessitated thereby, may be considered grounds for contract modification or an additional services Agreements.
-

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EXHIBIT B**Services to be Provided by Landscape Architect****I. Basic Services**

Given the above-stated scope of work, we will provide the following basic services:

A. Mitigation Plan

Based on meetings with the Client, his engineers and other consultants, the Consultant will define the Mitigation Plan requirements to establish an effective and efficient plan for submittal.

1. Conduct a Project initiation meeting with the Client to obtain existing information and establish mitigation objectives.
2. Conduct a site investigation trip in and around the area to determine surrounding influences, ordinances and requirements and establish on-site conditions critical to the Plan's development, including:
 - Physical boundaries and topography.
 - Proposed utilities.
 - Proposed channel improvements plan from the engineer.
 - Tree cover and tree removal
 - Mitigation requirements
 - Special conditions of the site
3. The Consultant will prepare a base map from available sources. The map will be based on a survey boundary provided by the Client. Aerial images are general area maps are not site specific surveys. The Consultant will coordinate with the engineer to provide the following:
 - Topographic survey and boundary verification
 - Infrastructure verification
 - Preliminary mitigation review
4. Develop a mitigation plan including:
 - Mitigation requirements
 - Off site mitigation opportunities
5. Review the conceptual Mitigation Plan with Client for approval and any final modification.
6. The Consultant will prepare a final Mitigation Plan, including final comments from the Client and other consultants, for submittal to the Corps of Engineers.

II. Additional Services

Services requested by the Client that are not included in Basic Services are considered Additional Services and shall be paid for by the Client. Additional Services shall only be provided if previously authorized by the Client. Additional Services may include, but not limited to, the following:

- A. Hazardous Site Assessments
 - B. Land Acquisition services
-

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- C. Easement acquisition or vacation
 - D. Construction Management
 - E. Preparation of As-built drawings
 - F. Assistance or representation in litigation concerning the property or proposed project.
 - G. Providing services other than those outlined in Basic Services.
 - H. Revisions to drawings previously approved by the Client due to changes in: Project scope, budget, schedule, or when such revisions are inconsistent with written approvals or instructions previously given; enactment or revision codes, laws, or regulations subsequent to the preparation of such documents.
 - I. Preparation of presentation materials for marketing or purposes other than in-progress approvals.
 - J. Preparation of as-built drawings
 - K. Public or other presentations beyond those described in Basic Services.
 - L. Provide consultation, drawings, reports and other work products related to permits, approvals and ordinances not described in Basic Services.
 - M. Providing professional services for the field selection of plant materials.
-

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EXHIBIT C**Work Schedule**

We are prepared to commence work immediately upon receipt of a sign Agreement and will coordinate our work schedule with that of the County and other consultants to assure our timely consultation and effective cooperation. We anticipate the following schedule:

1. **Mitigation Plan**
to be completed within 60 days of a signed contract

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EXHIBIT D**Fee Schedule****Labor Fee/Basic Services**

1. Mitigation Plan – to be provided at a lump sum fee of	<u>\$9,600.00</u>
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Total lump sum fee proposal if all items are accepted	\$9,600
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EXHIBIT II

HOURLY RATES

Principal Landscape Architect	\$110.00 /hr
Graphic Designer/Multi-Media Production	\$150.00 /hr
Senior project Manager	\$95.00 /hr
Staff Landscape Architect	\$75.00 /hr
Technical/Clerical	\$45.00/hr

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EXHIBIT IV**PRODUCTION SCHEDULE**

This Agreement shall become effective upon the date approved by *County* and will remain in full force and effect for the period required for the design, construction contract award and construction of the *Project*, including warranty periods and any extensions of time, unless terminated earlier as provided for herein. *Landscape Architect* shall complete all design work as described in the Scope of Services within the timeline and/or schedule provided in the Scope of Services.

The number of days expiring from the date of submittal to *County* of a complete work product to the date the review is finished and comments returned to *Landscape Architect* shall not be included within the days allowed for completion.

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EXHIBIT V**PROCEDURES FOR TERMINATION OR SUSPENSION**

Procedures for *Landscape Architect* to follow upon receipt of Notice of Termination:

1. Upon receipt of a Notice of Termination and prior to the effective date of the termination, *Landscape Architect* 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 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 the Notice of Termination *Landscape Architect* shall submit a statement, showing in detail the services performed under this Agreement prior to the effective date of termination.
2. Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of termination shall be delivered to *County* as a pre-condition to final payment.
3. Upon the above conditions being met, *County* shall pay *Landscape Architect* for approved services actually performed under this Agreement, less previous payments.
4. Failure by *Landscape Architect* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Landscape Architect* of any and all rights or claims to collect the fee that *Landscape Architect* may rightfully be entitled to for services performed under this Agreement.

Procedures for *Landscape Architect* to follow upon receipt of Notice of Suspension:

1. Upon receipt of a Notice of Suspension and prior to the effective date of the suspension, *Landscape Architect* 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. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to *County*, but shall be retained by *Landscape Architect* unless requested by *County*.
 2. During the period of suspension, *Landscape Architect* may submit the above-referenced statement to *County* for payment of the approved services actually performed under this Agreement, less previous payments.
-

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Procedures for *Landscape Architect* to follow upon exercise of right to terminate for substantial failure of *County* to perform:

1. In the event that *Landscape Architect* exercises such right to terminate, within thirty (30) days after receipt by *County* of *Landscape Architect's* Notice of Termination, *Landscape Architect* shall submit a statement detailing the services performed under this Agreement prior to the effective date of termination.
 2. Copies of all completed or partially completed reports, designs, plans, studies, specifications and other work product shall be delivered to *County* as a pre-condition to final payment. Upon the above conditions being met, *County* shall pay *Landscape Architect* for approved services actually performed under this Agreement, less previous payments.
 3. Failure by *Landscape Architect* to submit the required statement and to comply with the above stated conditions without good and reasonable cause shall constitute a waiver by *Landscape Architect* of any and all rights or claims to collect the fee that *Landscape Architect* may rightfully be entitled to for services performed under this Agreement.
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EXHIBIT VI**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. *Landscape Architect* will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. *Landscape Architect* 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. *Landscape Architect* 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. *Landscape Architect* will, in all solicitations or advertisements for employees placed by or on behalf of *Landscape Architect*, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - C. *Landscape Architect* 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 *Landscape Architect's* obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - D. *Landscape Architect* will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provisions 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. *Landscape Architect* will furnish 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 *Landscape Architect'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 *Landscape Architect* 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. *Landscape Architect* 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
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24, 1965, as amended by Executive Order 11375 (41 CFR 60), so that such provisions will be binding upon each subcontractor or vendor. *Landscape Architect* 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 *Landscape Architect* becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by *County* or Federal Agency, *Landscape Architect* may request *County* and United States to enter into such litigation to protect the interest of the United States.

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EXHIBIT VII**INSURANCE REQUIREMENTS**

During the life of this Agreement, *Landscape Architect* 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 \$500,000 per occurrence and \$1,000,000 in the aggregate, including coverage on same for independent subcontractor(s). WILLIAMSON COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$25,000 per occurrence and \$50,000 in the aggregate. *Landscape Architect* 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.
- E. In the event *Landscape Architect* is self-insured in connection with any or all of the above-required insurance policies, *Landscape Architect* shall submit proof of such self-insurance and all financial statements as reasonably required by the *County* in order to determine the acceptability of such self-insurance.

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

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

It is the intention of the *County* and the *County Judge*, and agreed to and hereby acknowledged by the *Landscape Architect*, that no provision of this Professional Services Agreement shall be construed to require the *County* or the *County Judge* to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as specifically required in

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direct connection with an insurance claim or threat of claim under an insurance policy required under this Exhibit which absolutely requires arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.

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APPENDIX A

SCOPE OF SERVICES

THE ATTACHED SCOPE OF SERVICES IS INTENDED TO BE CONSISTENT WITH THE WILLIAMSON COUNTY PROFESSIONAL SERVICES AGREEMENT. TO THE EXTENT THE SCOPE IS INCONSISTENT WITH THE PROFESSIONAL SERVICES AGREEMENT, THE PROFESSIONAL SERVICES AGREEMENT WILL SUPERSEDE THE SCOPE AND WILL BE CONTROLLING.

THE LANDSCAPE ARCHITECT SHALL PROVIDE EXPERT TESTIMONY IN ANY ADMINISTRATIVE OR COURT PROCEEDINGS THROUGH AN APPROPRIATE LANDSCAPE ARCHITECTURAL PROFESSIONAL TO BE DETERMINED BY COUNTY AS ADDITIONAL SERVICES AT THE RATE OF COMPENSATION SET FORTH IN EXHIBIT II.

EXCEPT AS PROVIDED FOR FEE SERVICES OR WORK-ORDER BASED SERVICES, THE ATTACHED SCOPE OF SERVICES SHALL INCLUDE A PRODUCTION SCHEDULE REFLECTING A TIMELINE FOR THE EXECUTION OF THE PROJECT.

AGENDA ITEM 32

Consider approving public utility easement in the William Addison Survey No. 21.

Moved: **Commissioner Limmer**

Seconded: **Judge Doerfler**

Motion: To approve a public utility easement in the William Addison Survey No. 21.

Vote: **5 – 0**

AGENDA ITEM 33

Discuss and consider approving county to help with paving and hauling on the new Head Start building being constructed.

Robert Howard with the Williamson-Burnet Counties Opportunites, Inc. discussed the request for assistance with the Head Start project.

Moved: **Commissioner Heiligenstein**

Seconded: **Commissioner Limmer**

Motion: To approve financial participation in construction on the new Head Start facility being built in Georgetown, with the stipulation that the County Judge and Commissioner Hays find money in the budget to allocate for the project to pay an independent contractor to perform the work instead of the Road & Bridge Department.

Vote: **5 - 0**

< Attachment >