

# **CONSULTING SERVICES AGREEMENT**

**(ETC Institute, Inc.)**

THIS CONSULTING SERVICES AGREEMENT ("Agreement") between **ETC Institute, Inc.**, (hereinafter "Consultant") and **Williamson County, Texas**, a political subdivision of the State of Texas (hereinafter "County"), having an address of 710 Main Street, Suite 101, Georgetown, Texas 78626, sets forth the terms and conditions pursuant to which Consultant will provide certain services.

## **1. Consulting Services**

1.1 A statement of work ("SOW") is attached hereto and the terms therein are incorporated in this Agreement. Consultant agrees to perform the consulting services ("Services") as set forth in the attached SOW, and in any subsequently approved SOW referencing this Agreement, in a professional manner. Consultant may provide the services described in the SOW by using Consultant personnel or selected independent contractors ("Contractors"). Consultant agrees to provide the items described in the SOW ("Deliverables").

## **2. Term and Termination**

2.1 This Agreement will have an initial term of one year, or the length of the engagement, if longer than one year, and will renew automatically for successive one-year periods unless either party gives prior notice of termination.

2.2 Either party may terminate this Agreement, with or without cause, upon not less than thirty (30) calendar day's written notice to the opposite party. County shall pay Consultant for all Services performed prior to termination.

2.3 If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach is cured within ten (10) days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within said ten (10) days, then and in that instance, the said ten (10) day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the Event of Breach within the above referenced ten (10) day period or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies mentioned hereinafter and/or remedies available under the law, terminate this Agreement.

### **3. Payment and Taxes**

3.1 The services will be charged to County on a Time and Material basis not including travel or other reimbursable expenses. County agrees to pay Consultant the fees set forth in the SOW. County shall reimburse Consultant for reasonable travel and out-of-pocket expenses incurred in the performance of this Agreement; provided, however, all proposed travel and out-of-pocket expenses must be reviewed and approved by County prior to being incurred.

Unless specified otherwise in the SOW, Consultant will invoice County semi-monthly for Services. County's payment of the Services and Deliverables shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by County within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, County shall notify Consultant of the discrepancy. Following County's notification of any discrepancy as to an invoice, Consultant must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. County shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. County's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31<sup>st</sup>) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

3.2 County agrees to pay the amount of any sales, value added, use, excise or similar taxes applicable to the performance of the SOW, if any, or County shall provide Consultant with a certificate acceptable to the taxing authorities exempting County from payment of such taxes.

### **4. Ownership and License**

Consultant retains all ownership and intellectual property rights in techniques, methodology, and products (collectively "IP") provided or used by Consultant, if any, in the performance of services, and any extensions to Consultant IP developed in conjunction with the SOW. Consultant grants to County, a perpetual, nonexclusive, nontransferable, worldwide, fully paid-up license to use, solely for its own internal business purposes, elements of the Deliverables, which contain Consultant IP.

### **5. Confidential Information**

5.1 To the extent authorized by law, any business, operational, commercial, financial or technical information furnished by Consultant to County under this Agreement will remain Consultant's property, will be deemed proprietary, will be kept confidential to the extent allowed by law, and

will be promptly returned at Consultant's request. Except as otherwise required by law, County may not disclose, without Consultant's written permission, any such information or data to any third party, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this section will survive the cancellation, termination, or completion of this Agreement.

5.2 To the extent authorized by law, any business, operational, commercial, financial or technical information provided by County to Consultant will remain County's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at County's request. Consultant may not disclose, without County's written permission or as required by law, any such information or data to any third party, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the cancellation, termination, or completion of this Agreement.

5.3 To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or information furnished to County as to whether or not the same must be made available to the public. It is further understood that County, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to Consultant for the disclosure to the public, or to any person or persons, of any items or information furnished to County by Consultant in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

## **6. Relationship between the Parties**

Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

## **7. Warranties**

7.1 Consultant warrants that the consulting services provided pursuant to this Agreement will be performed consistent with generally accepted industry standards and as provided in Article 1.

7.2 Consultant agrees to fully cooperate with the County throughout the implementation of the services provided, and thereafter, to assist in the determination of the cause and resolution of any issues related to the services as implemented. In the event an issue with the services arises and the cause of the issue is determined to be inadequate work, errors, or omissions in the services provided by Consultant, Consultant shall correct the issue at no additional cost to the County as soon as reasonably practical, but in no event later than seven (7) calendar days following notice to Consultant that inadequate work, errors, or omissions in the services provided by Consultant exist.

## 8. Indemnification and Insurance

### 8.1 INDEMNIFICATION.

**INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS:** TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONSULTANT SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF THE COUNTY’S CHOOSING), AND HOLD HARMLESS THE COUNTY, AND THE COUNTY’S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE “INDEMNITEES”) AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES’ GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF THE CONSULTANT, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES HEREUNDER. TO THE EXTENT ALLOWED BY LAW, CONSULTANT HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

**INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS:** TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF THE COUNTY’S CHOOSING), AND HOLD HARMLESS THE COUNTY, AND THE COUNTY’S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE “INDEMNITEES”) FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS’ FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE SERVICES DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF CONSULTANT OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

8.2 Insurance: Consultant shall provide and maintain, until the services covered in this Agreement is completed and accepted by the County, the minimum insurance coverage in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to the County and name the County as an additional insured.

Type of Coverage	Limits of Liability
a. Worker's Compensation	Statutory
b. Employer's Liability	
Bodily Injury by Accident	\$500,000 Ea. Accident
Bodily Injury by Disease	\$500,000 Ea. Employee
Bodily Injury by Disease	\$500,000 Policy Limit
c. Comprehensive general liability including completed operations and contractual liability insurance for bodily injury, death, or property damages in the following amounts:	

COVERAGE

PER PERSON

PER OCCURRENCE

Comprehensive General Liability	\$1,000,000	\$1,000,000
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Aggregate policy limits: \$2,000,000

- d. Comprehensive automobile and auto liability insurance (covering owned, hired, leased and non-owned vehicles):

COVERAGE	PER PERSON	PER OCCURRENCE
Bodily injury (including death)	\$1,000,000	\$1,000,000
Property damage	\$1,000,000	\$1,000,000
Aggregate policy limits	No aggregate limit	

Consultant, as an independent contractor, meets the qualifications of an “Independent Contractor” under Texas Worker’s Compensation Act, Texas Labor Code, Section 406.141, and must provide its employees, agents and sub-subcontractors worker’s compensation coverage. Contactor shall not be entitled to worker’s compensation coverage or any other type of insurance coverage held by the County.

Upon execution of this Agreement, Consultant shall provide the County with insurance certificates evidencing compliance with the insurance requirements of this Agreement.

**9. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

**10. Change Requests**

County or Consultant may request changes to the Services to be performed under the applicable SOW by written notice (“Change Requests”). The nature of these changes include, but are not limited to, additions to or deletions from any services, changes to the schedule, prevention or loss of work due to inadequate facilities or technical infrastructure, or changes to key final decisions, or, any extra work by Consultant necessitated by County not meeting its obligations or preventing Consultant from meeting its obligations.

All Change Requests shall be subject to the following terms:

i. Disputes regarding Change Requests shall be handled pursuant to applicable dispute resolution section contained herein below;

ii. Any changes to the terms of this Agreement shall be reduced to a written amendment and executed by both parties prior to such changes becoming effective; and

iii. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any amendment relating to a Change Request, the terms and conditions of this Agreement shall control.

## **11. Dispute Resolution/Mediation**

The parties to this Agreement will work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Agreement, whether stated in tort, contract, statute, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Agreement, will conduct the mediation under the then current rules of the AAA. Any mediation under this Agreement shall be conducted in Williamson County, Texas. All costs involved in the mediation shall be borne equally between the parties, except that each party shall bear its own attorneys fees. Nothing herein is intended to prevent either party from seeking any other remedy available hereunder or at law, including seeking redress in a court of competent jurisdiction. This provision shall survive the termination of this Agreement.

The parties hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

## **12. General**

12.1 Venue and Governing Law. Each party to this Agreement hereby agrees and acknowledges that 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, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

12.2 Force Majeure. If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

12.3 Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the

parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

12.4 Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns. No party to this Agreement may assign or transfer its interest in or obligations under this Agreement without the prior written consent of all parties to this Agreement.

12.5 No Third-Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the parties hereto and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

12.6 No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

12.7 County's Right to Audit. Consultant 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 Consultant which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant agrees that County shall have access during normal working hours to all necessary Consultant 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 Consultant reasonable advance notice of intended audits.

12.8 Appropriation of Funds by County. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Consultant understands and agrees that the County's payment of amounts under this Agreement is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

12.9 Conflicting Terms. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the SOW, as amended, the terms and conditions of this Agreement shall control.

12.10 Authorized Expenses. In the event County authorizes, in advance and in writing, reimbursement of non-labor expenses related to the services subject of this Agreement, County will pay such actual non-labor expenses in strict accordance with the Williamson County Vendor Reimbursement Policy (as amended), which is incorporated into and made a part of this Agreement

by reference. The Williamson County Vendor Reimbursement Policy can be found at: [WilliamsonCountyVendorReimbursementPolicyMarch2023.pdf \(wilco.org\)](#). Invoices requesting reimbursement for authorized non-labor expenses must be accompanied by copies of the provider's invoice and clearly set forth the actual cost of the expenses, without markup.

12.11 No Agency Relationship & Indemnification. It is understood and agreed that Consultant shall not in any sense be considered a partner or joint venturer with the County, nor shall Consultant hold itself out as an agent or official representative of the County. Consultant shall be considered an independent contractor for the purpose of this Agreement and shall in no manner incur any expense or liability on behalf of the County other than what may be expressly allowed under this Agreement. The County will not be liable for any loss, cost, expense or damage, whether indirect, incidental, punitive, exemplary, consequential of any kind whatsoever for any acts by Consultant or failure to act relating to the services being provided.

12.12 Foreign Terrorist Organizations. Consultant represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

12.13 Media Releases. Consultant shall not use County's name, logo, or other likeness in any press release, marketing materials, or other announcement without the County's prior written approval.

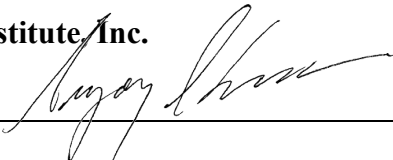
12.14 Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

12.15 Entire Agreement. This Agreement (including any SOW attached hereto or subsequently approved by the parties) represents the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements or representations. This Agreement may not be modified or amended except in a writing signed by an authorized representative of each party. **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 WILLIAMSON COUNTY COMMISSIONERS COURT.** It is agreed that the terms of this Agreement shall supersede the preprinted terms in any County purchase order or other ordering document.



WITNESS WHEREOF each County and Consultant has caused its authorized representatives to execute and deliver this Agreement effective as of the date which this agreement is last signed below.

**ETC Institute Inc.**

BY:  \_\_\_\_\_

NAME: Gregory S Emas

TITLE: CFO

DATE: January 24, 2024

**WILLIAMSON COUNTY, TEXAS**

BY: \_\_\_\_\_

TITLE: As Presiding Officer of the  
Williamson County Commissioners Court

DATE: \_\_\_\_\_, 20\_\_\_\_

## **EXHIBIT A STATEMENT OF WORK**

The following describes the Services shall be provided and accomplished by Consultant pursuant to the terms and conditions of the Agreement and this SOW:

### **Scope of Work:**

ETC Institute, Inc. will design and administer a survey for Williamson County, Texas. This includes: developing the survey in conjunction with County staff, designing the sampling plan to complete a total of 1,200 completed surveys from randomly selected Williamson County residents, survey administration fees that include all printing and postage for the initial mailing of the survey as well as additional administration activities including but not limited to postcards, text messages, emails, social media posts, and potentially a second mailing of the full survey packet to households who do not initially respond, providing a full report with executive summary, charts, benchmarking, Importance-Satisfaction Analysis, cross-tabulations of the results by key demographics, verbatim open-ended responses, data questions that show the results for all questions on the survey, a copy of the survey instrument, and GIS maps, and an on-site presentation of the final results to the Commissioners Court during a mutually agreed upon date and time. ETC Institute can also deliver the final results of the survey in an Excel spreadsheet that includes the latitude and longitude coordinates, at the block level, for all responses.

### **Time for Performance:**

The Service to be performed under this SOW shall be completed within **sixteen (16) weeks from the development of the survey.**

### **Compensation:**

The maximum amount payable for all Time and Materials under the Agreement, without modification, shall not exceed **\$40,500.00.**

### **Time and Materials Rates:**

The rates for Time and Materials shall be as follows:

<b>Survey and Sampling Plan Development</b>	<b>\$7,600.00</b>
<b>Initiate Survey Administration (Printing &amp; Mailing)</b>	<b>\$11,400.00</b>
<b>Survey Administration Complete</b>	<b>\$13,300.00</b>
<b>Analyze the Results and Draft Report</b>	<b>\$5,700.00</b>
<b>On-Site Presentation</b>	<b>\$2,500.00</b>

### **Payment:**

Payment for the Time and Materials actually incurred shall be made in accordance with the terms of the Agreement.