

## ENGINEERING SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered by and between COLLIN COUNTY, TEXAS, a political subdivision of the State of Texas, hereinafter referred to as “County”, and, **Wiss, Janney, Elstner Associates, Inc.**, an Illinois Corporation, hereinafter referred to as “Engineer”, to be effective from and after the date as provided herein.

### WITNESSETH:

**WHEREAS**, the County desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with Forensic Engineering services in Collin County, hereinafter referred to as the “Project”; and

**WHEREAS**, the Engineer desires to render such engineering services for the County upon the terms and conditions provided herein.

### NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

#### I. Retention of the Engineer

The County hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project; Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.

#### II. Scope of Services

2.1 Before commencing work on any project the Engineer shall submit his proposed fee in writing. Work for each phase shall be preceded by a Notice to Proceed issued by County. The parties understand and agree that deviations or modifications in the form of written amendments change orders may be authorized from time to time by the County.

2.2 The Engineer will serve as the County’s professional engineering representative under this Agreement, providing professional engineering, consultation, advice and furnishing customary services incidental thereto. The Engineer agrees to cooperate and coordinate with other design professionals, the County and its contractors to help facilitate efficient construction of the Project and maintain the Project schedule.

2.3 The Engineer shall advise the County with regard to the necessity for subcontracting work in connection with the design and engineering work to be performed hereunder. The Engineer shall also advise the County concerning the results of same. Such information shall be furnished to the County.

2.4 The presence or duties of the Engineer's personnel at a construction site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to County's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including but not limited to, all construction methods, means, techniques, sequences and procedures necessary for completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by such construction work. The Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

2.5 The Engineer will make periodic recommendations for periodic construction progress payments to the construction contractor. Recommendations by the Engineer to the County for periodic construction progress payments to the construction contractor will be based on the Engineer's knowledge, information, and belief from sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that there are not other matters at issue between the County and the construction contractor that affect the amount that should be paid.

2.6 The Engineer agrees to provide a complete and coordinated set of drawings and specifications for the construction of the Project, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. Construction drawings, specifications, and other construction documents prepared by the Engineer or its consultants and submitted to the County for approval or contractors for bidding or negotiation purposes shall be complete and capable of construction "as is". While the utility of communications between design professionals and construction contractors for the purpose of clarifying design intent is recognized, the Project should be capable of construction without the necessity of formal revisions or contract modifications to provide missing design information after construction contracts are awarded. Said documents shall comply with all applicable codes, ordinances, statutes, and regulations governing the design of the Project.

2.7 The Engineer shall assist the County in the preparation and filing of documents required for the approval of governmental authorities having jurisdiction over the Project.

### **III. Schedule of Services**

3.1 The Engineer agrees to commence its services immediately upon execution of this Agreement, or as otherwise directed in writing by the County, and to proceed diligently with said services to completion. Engineer shall not be considered in default of this Agreement for delays in performance caused by circumstances beyond its reasonable control. Should such circumstances occur, the Engineer shall, within a reasonable time of being prevented from performing, give written notice to the County describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

3.2 In the event that the Engineer is delayed in the progress of the work on the Project by an act or neglect of the County, County's employees, or separate contractors employed by the County, or by changes ordered in the Project, fire, adverse weather conditions not reasonably anticipated, unavoidable casualties or other causes beyond the Engineer's control, or delay authorized by the County pending arbitration, or by other causes which the County and Engineer agree may justify delay, then the Contract Time shall be reasonably extended by Change Order. The County shall have the right at any time to delay or suspend the work or any part thereof for any reasonable time and if this happens, the Engineer's sole remedy for any delays or suspension shall be any extension of time. The County shall not be independently liable to the

Engineer for any delay or interference caused by circumstances beyond the County's control or any delay caused by any other person or entity.

#### **IV. Compensation and Method of Payment**

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Fee Schedule attached hereto as Exhibit "C" and thereby made a part of this Agreement. Engineer further agrees that it will prepare and present such monthly progress reports and itemized statements per the fee schedule described in said Exhibit "C". Payment will be made in accordance with The Texas Government Code, Title 10, Subtitle F, Chapter 2251. Engineer further agrees to the following terms prior to payment being due by County:

##### **A. Invoice and Payment**

- (1) The Engineer shall provide the County sufficient documentation to reasonably substantiate the invoices.
- (2) The Engineer will issue monthly invoices for all work performed under the Agreement.
- (3) In the event of disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The County will exercise reasonableness in contesting any portion thereof. NO interest will accrue on any contested portion of the billing until mutually resolved.
- (4) In the event of any conflict between Paragraph IV and Chapter 2251 of the Texas Government Code, The Texas Government Code shall prevail.

#### **V. Information to be provided by the County**

5.1 The County agrees to furnish to Engineer, prior to the Engineer's commencement of its services, all that information set forth and described on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

5.2 The County will make its facilities accessible to the Engineer as required for the Engineer's performance of its services. The Engineer represents that it understands the scope of this Agreement and has reviewed and inspected the Project sites, and can fully perform its obligations pursuant to this Agreement. Any failure of the Engineer to acquaint itself with the available information will not relieve the Engineer from its responsibilities pursuant to this Agreement.

5.3 The County shall disclose, to the extent known to the County, the results of prior tests, inspections or investigations conducted for the Project upon request by the Engineer.

#### **VI. Progress Meetings**

In addition to providing the monthly progress reports as required under Paragraph IV herein above, Engineer agrees to attend all monthly progress meetings scheduled by County, and at such meetings to outline work accomplished and special problem or delays encountered in connection with the Project during the previous report period, as well as planned work activities and special problems and delays anticipated for the next report period. The Engineer agrees to cooperate and coordinate with other design professionals, the County and its contractors to help facilitate efficient construction of the Project and maintain the Project schedule.

**VII. Insurance**

Engineer agrees to meet all insurance requirements as set forth on Exhibit "E" which is attached hereto and thereby made a part of this Agreement.

**VIII. Indemnity**

Engineer agrees to indemnify the County to the fullest extent allowed by section 271.904 of the Texas Local Government Code, including payment of the County's reasonable attorneys' fees to the extent such is allowed under 271.904(b).

**IX. Independent Contractor**

In the performance of services hereunder, the Engineer shall be deemed an independent contractor and shall not, with respect to its acts or omissions, be deemed an agent, subcontractor or employee of the County.

**X. Assignment and Subletting**

The Engineer agrees that neither this Agreement nor the services to be performed hereunder will be assigned or sublet without the prior written consent of the County. The Engineer further agrees that the assignment or subletting or any portion or feature of the services required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the County as provided by this Agreement.

**XI. Audits and Records/Prohibited Interest**

11.1 The Engineer agrees that at any time during normal business hours, and as often as County may deem necessary, Engineer shall make available to representatives of the County for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the County to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of three (3) years from the date of final settlement of this Agreement or of such other or longer period, if any, as may be required by applicable statute or other lawful requirements.

11.2 The Engineer agrees that it is aware of the conflict of interest requirements of the state law which are applicable to persons entering into contracts with the County and will abide by the same. Further, a lawful representative of Engineer shall execute the Affidavit shown in Exhibit "F". Engineer understands and agrees that the existence of a conflict of interest during the term of this Agreement will render the agreement voidable.

11.3 The Engineer acknowledges to the County that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed Project and business relationships with persons or entities with interest in abutting properties.

## **XII. Contract Termination**

The parties agree that County shall have the right to terminate this Agreement without cause upon thirty (30) days written notice to Engineer. In the event of such termination without cause, Engineer shall deliver to County all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall have the right to terminate this Agreement upon thirty (30) days written notice to County in the event of the County's breach of any material term of this Agreement, including but not limited to compensation and method of payment. Regardless of which party initiates termination, Engineer shall be entitled to compensation for any and all services completed to the satisfaction of County in accordance with the provisions of this Agreement prior to termination.

## **XIII. Cost Estimates**

The parties recognize and agree that any and all Engineer's estimates of probable construction costs (estimates) prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer has no control over costs or the price of labor, equipment or materials or over the Contractor's methods of pricing and does not guarantee that any bids solicited or received in connection with the Project will not vary from estimates prepared by Engineer.

## **XIV. Ownership of Documents**

Original drawings and specifications (Instruments of Service) created by Engineer are the property of the Engineer; however, the Project is the property of the County, and Engineer may not use the drawings and specifications for any purpose not relating to the Project without County's consent. County shall be furnished with such reproductions of drawings and specifications as County may reasonably require. Upon completion of the services or any earlier termination of this Agreement under Article XII, and payment in full of all monies due Engineer, Engineer will revise drawings to reflect significant changes made during construction as per the marked-up prints, drawings, and other data furnished to the Engineer by or through the County or Contractor. Engineer will promptly furnish the County with one (1) complete set of reproducible record prints. All such reproductions shall be the property of the County who may use them without the Engineer's permission for any proper purpose relating to the Project, including but not limited to, maintenance of the Project, additions to the Project, or completion of the Project. The aforementioned revisions will be based upon information supplied by the County's construction contractor and will be assumed by Engineer to be complete and accurate. As such, Engineer shall not be responsible for errors or omissions resulting therefrom. Prints shall be furnished, as an additional service, at any other time requested by County. The County may use such drawings in any manner it desires; provided, however, that the Engineer shall not be liable for the use of such drawings for any project other than the Project described herein.

## **XV. Complete Contract**

15.1 This Agreement, including the exhibits hereto numbered "A" through "F", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior written

or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by the County and the Engineer.

15.2 Warranties contained in this Agreement are in addition to and not in lieu of, any and all other liability imposed upon the Engineer by law with respect to the Engineer's duties, obligations, and performance hereunder. The Engineer's liability hereunder shall survive the County's final acceptance and payment for the Project. All representations and warranties set forth in this Agreement, including without limitation, this paragraph, shall survive the final completion of the Work or earlier termination of this Agreement. The Engineer acknowledges that the County is relying upon the Engineer's skill and experience in performing the services pursuant to this Agreement.

#### **XVI. Mailing of Notices**

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to the County permitted or required under this Agreement shall be addressed to the County at the following addresses:

Bill Burke  
Construction Projects Director  
4600 Community Ave.  
McKinney, TX 75071

Bill Bilyeu  
Collin County Administrator  
2300 Bloomdale #4192  
McKinney, TX 75071

Collin County Purchasing  
2300 Bloomdale #3160  
McKinney, TX 75071

County agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Stephen V. Grelle, PE  
Senior Associate  
6363 N. State Highway 161, Suite 550  
Irving, TX 75038

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the date such notice or communication is posted by the sending party.

#### **XVII. Miscellaneous**

##### **A. Paragraph Headings**

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

##### **B. Interpret Contract Fairly**

Although this Agreement is drafted by County, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorable for either party.

**C. Venue/Governing Law**

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. The venue for any litigation related to this Agreement shall be in Collin County, Texas.

**D. Parties Bound**

County and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

**E. Severability**

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect.

**F. Effective Date**

This Agreement shall be effective from and after execution by both parties hereto.

**G. Term of Agreement**

The term of Agreement shall conform to the schedule as stipulated in Exhibit "B" attached herein. No other extension shall be authorized unless granted by written agreement between the County and Engineer.

**H. Observe and Comply**

Engineer shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this Agreement and the work hereunder, and shall observe and comply with all orders, laws, ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. Engineer agrees to defend, indemnify and hold harmless County and all of its officers, agents, and employees from and against all claims or liability arising out of the violation or any such order, law, ordinance, or regulation, whether it be by itself or its employees.

**I. Expenses for Enforcement**

In the event either Party hereto is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing Party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

**J. Force Majeure**


No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot

or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**WITNESS OUR HANDS AND SEALS** on the date indicated below.

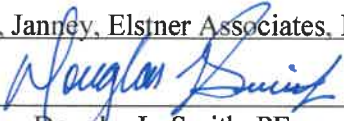
Date: 2/26/2021

COLLIN COUNTY, TEXAS

By:   
Michelle Charnoski, CPPB  
Purchasing Agent

2021-161-02-22  
Court Order No.

Date: 2/24/21

Wiss, Janney, Elstner Associates, Inc.  
By:   
Douglas L. Smith, PE  
Title: Principal and Unit Manager



ACKNOWLEDGMENT

STATE OF TEXAS }  
 }  
COUNTY OF Dallas }

Wiss, Janney  
Elstner Associates

BEFORE ME, Karen S. Maynard on this day personally appeared Douglas L. Smith, of Inc., a Illinois Corporation, known to me ~~(or proved to me on the oath of~~ or through ~~(description of identity card or other document)~~ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act and deed of the corporation, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 24th day of February, 2021.

Karen S Maynard  
Notary Public, State of Texas

Karen S. Maynard  
Printed Name



My Commission expires on the 16th day of June, 2021.

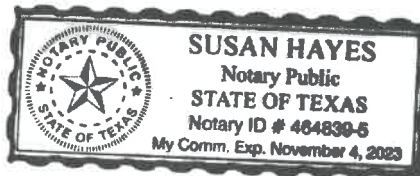
STATE OF TEXAS }  
 }  
COUNTY OF COLLIN }

BEFORE ME, Susan Hayes on this day personally appeared Michelle Charnoski, CPPB, Purchasing Agent of COLLIN COUNTY, TEXAS, a political subdivision of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act and deed of COLLIN COUNTY, TEXAS, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 26th day of February, 2021.

Susan Hayes  
Notary Public, State of Texas

Susan Hayes  
Printed Name



My Commission expires on the 4th day of November, 2023.

Agreement No. 2021-122

**EXHIBIT "A"**

**SCOPE OF SERVICES**

Scope of Services for each project will vary; therefore individual requirements will be established at the time of need for each project.

**EXHIBIT "B"**

**PROJECT SCHEDULE**

This agreement shall be effective upon execution by both parties and shall be in effect for the period of one (1) year with two (2) optional one (1) year renewals.

Engineering services for various projects will be performed on an as needed basis and upon request of the County. Completion schedules will vary depending on the size and complexity of each project.

**EXHIBIT "C"**

**FEE SCHEDULE**

**Hourly Billing Rates**

**Professional Staff**

<b>Senior Principal</b>	<b>\$350.00</b>
<b>Principal</b>	<b>\$290.00</b>
<b>Associate Principal</b>	<b>\$235.00</b>
<b>Senior Associate</b>	<b>\$205.00</b>
<b>Associate III</b>	<b>\$185.00</b>
<b>Associate II</b>	<b>\$160.00</b>
<b>Associate I</b>	<b>\$130.00</b>

**Professional Support Staff**

<b>Senior Specialist</b>	<b>\$150.00</b>
<b>Specialist</b>	<b>\$135.00</b>
<b>Senior Technician</b>	<b>\$115.00</b>
<b>Technician II</b>	<b>\$100.00</b>
<b>Technician I</b>	<b>\$85.00</b>

*RATES SUBJECT TO INCREASE  
AT TIME OF AGREEMENT  
RENEWAL.*

*MS 2/24/21*

**EXHIBIT "D"**

**INFORMATION TO BE PROVIDED BY THE COUNTY**

The County will make available to Engineer any and all information, data, etc. as it may have in its possession relating to the project described herein.

**EXHIBIT "E"**

**INSURANCE REQUIREMENTS**

1.1 Before commencing work, the vendor shall be required, at its own expense, to furnish the Collin County Purchasing Agent with certified copies of all insurance certificate(s) indicating the coverage to remain in force throughout the term of this contract.

1.1.1 **Commercial General Liability** insurance including but not limited to the coverage indicated below. Coverage shall not exclude or limit Products/Completed Operations, Contractual Liability, or Cross Liability.

- Each Occurrence: \$1,000,000
- Personal & Adv Injury: \$1,000,000
- Products/Completed Operation: \$1,000,000
- General Aggregate: \$2,000,000

1.1.2 **Workers Compensation** insurance as required by the laws of Texas, and Employers' Liability.

Employers' Liability

- Liability, Each Accident: \$500,000
- Disease-Each Employee: \$500,000
- Disease – Policy Limit: \$500,000

1.1.3 **Commercial Automobile Liability** insurance including owned, non-owned, and hired vehicles used in connection with the contract.

- Combined Single Limit – Each Accident: \$1,000,000

1.1.4 **Professional/Errors & Omissions Liability** insurance with a two (2) year extended period of coverage, (i.e. tail coverage). If you choose to have project coverage endorsed onto your base policy, this would be acceptable.

- Each Occurrence/Aggregate: \$1,000,000

1.1.5 **Umbrella/Excess Liability** insurance.

- Each Occurrence/Aggregate: \$1,000,000

1.2 With reference to the foregoing insurance requirement, the vendor shall endorse applicable insurance policies as follows:

1.2.1 A waiver of subrogation in favor of Collin County, its officials, employees, volunteers and officers shall be for General Liability, Commercial Automobile Liability and Workers' Compensation.

1.2.2 The vendor's insurance coverage shall name Collin County as additional insured under the General Liability policy.

1.2.3 All insurance policies shall be endorsed to require the insurer to immediately notify Collin County of any decrease in the insurance coverage limits.

1.2.4 All insurance policies shall be endorsed to the effect that Collin County will receive at least thirty (30) days notice prior to cancellation, non-renewal or termination of the policy.

Agreement No. 2021-122

- 1.2.5 All copies of Certificates of Insurance shall reference the project/contract number.
- 1.3 All insurance shall be purchased from an insurance company that meets the following requirements:
  - 1.1.1 A financial rating of A+VII or better as assigned by the BEST Rating Company or equivalent.
- 1.4 Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:
  - 1.4.1 Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
  - 1.4.2 Sets forth the notice of cancellation or termination to Collin County.

**EXHIBIT "F"**

**AFFIDAVIT OF REGULATION OF CONFLICTS OF INTEREST**

The undersigned declares and affirm that during the term of this contract they will maintain compliance as defined in Vernon's Texas Codes Annotated, Local Government Code Title 5, Section C, Chapter 171.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Engineer      Douglas L. Smith, PE \_\_\_\_\_

Title of Officer      Principal and Unit Manager \_\_\_\_\_

Signature of Officer      Douglas L. Smith \_\_\_\_\_

Date:                              2/24/21 \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS                      }

  }

COUNTY OF Dallas                   }

**BEFORE ME**, on this day personally appeared Douglas L. Smith, known to me ~~(or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (description of identity card or other document)~~ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the 24th day of February, 2021.

Karen S. Maynard  
Notary Public, State of Texas

Karen S. Maynard  
Printed Name

My Commission expires on the 10th day of June, 2021.