

STANDARD SEGAL WATERS CONSULTING CONSULTING AGREEMENT

This Agreement between The Segal Company (Western States) Inc., a **Maryland** corporation, d/b/a Segal Waters (hereinafter "Segal") and **Webb County, Texas, a political subdivision of the State of Texas acting by and through its Commissioners Court** (the "Client") is entered into as of **December 1, 2018**.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

1. **Description of Services**

Segal shall provide to the Client the services described in the **"Revised Proposal to Webb County, TX RFP #: 2018-006 Proposal for an Employee Classification and Wage Proposal."** The Proposal is annexed hereto as Exhibit "A" and shall be incorporated by reference as if fully set forth herein.

2. **Changes in Scope of Services**

Any work requested by the Client that is not included in Exhibit A or any revisions of work requested by the Client shall be subject to a written agreement. Prior to performing any services not contemplated in the Proposal, the parties must reach agreement on the terms of the change(s) and signify their agreement in writing. Any such accepted change shall be attached hereto as an Exhibit to this Agreement.

From time to time, the Client may request or Segal may propose in writing future services. If such proposal is accepted by the parties, then such additional services will be governed by the terms and conditions of this Agreement and any such proposal shall be attached hereto as an Exhibit to this Agreement.

3. **Responsibility of Client**

- a. **Data Request.** Segal will prepare a detailed data request outlining what is necessary to perform these services. Data will be requested in a computer format compatible with Segal's computer system (being Microsoft Excel and Word) and year 2000 compliant (that is, appears in a four-digit year representation, for example 2004, instead of '04).

Upon receipt of the data, Segal will examine it for missing information and internal consistency. There may be additional fees based on hourly time charge rates to convert data not presented in the format requested and for the additional processing time required to reconcile data that contains errors, duplicate records or missing information.

- b. **Timely Provision of Information.** Client will assure that its other professionals and vendors cooperate with Segal and provide the information requested or needed by Segal on a timely basis.

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4. **Payment Terms**

- a. **Basic Annual Services.** Our annual fee for providing the basic services described in Exhibit A will be \$75,000, commencing **December 1, 2018.**

The proposed fee includes charges for all professional, analytic, and administrative services, as well as all expenses associated with materials, supplies, overhead, and travel for all tasks outlined in this proposal except as otherwise noted.

Our total fixed fee will be billed at the end of each month as follows:

Three (3) equal invoices of \$18,750.00

One payment of \$8,750 at the end of the fourth month and

One final payment of \$10,000.00 within 15 business days of the presentation of the study to the Commissioners Court or 15 business days of the submission of the report to the County, whichever occurs first.

Please note: if the information in the census file is inaccurate additional hourly fees may be charged for data correction and preparation.

Travel expenses for meetings scheduled less than one week in advance will be charged additionally. If a scheduled meeting is cancelled by the client, any non-refundable travel expenses will be billed to the client at cost.

Our proposed fee assumes only the services and on-site meetings described in the proposal. Should the County request additional services or additional on-site meetings, we would charge the hourly rates shown below, as well as for the time and expenses associated with travel.

Staff Member	Title/Role	2018 Hourly Rate
Elliot R. Susseles	Senior Vice President, Practice Leader	\$475
Ruth Ann Eledge	Vice President, Senior Consultant, Project Manager	\$385
Cristy Reetz	Associate Consultant	\$310
Melinda Castellon	Senior Associate	\$275
Holly Waggoner		
Fredericka Ogbazi	Associate	\$225

In the event we are required to spend significantly more time than anticipated because of circumstances beyond our control, we will inform you and bill separately for those services.

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If this Agreement is terminated or authorized services or projects are suspended, Segal will be reimbursed for all time charges incurred to the date of termination or suspension, up to a maximum of the fee and travel expenses, incurred up to that date.

- b. **Supplemental and Specialized Consulting Services.** Fees for Specialized Consulting Services and Supplemental Services generally will be charged on a time charge basis or, in some instances, may be charged on a project basis. Segal will provide an estimate of such charges before the work is commenced. The time charges shall be based on Segal's time charge rates unless otherwise agreed to. Supplemental and Specialized Consulting Service charges will be billed monthly in advance unless agreed to otherwise.

Projects Outside the Scope: Fees for projects outside the scope of this Agreement will be mutually agreed upon with the Client before beginning work on the project.

5. **Non-Appropriation**

Funding for this Agreement between the Client and Segal is dependent at all times upon the appropriation of funds by the organization authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated effective the last day for which appropriated funding is available.

6. **Term of Agreement**

The term of this Agreement shall commence on December 1, 2018 and continue in effect until November 31, 2019 which may be extended upon the agreement of the parties. Segal shall complete the study and final report within the project timeline set forth in Step 4: "Present Final Results to the County" as set forth in the Revised Proposal for an Employee Classification and Wage Study, Revised October 22, 2018 in the attached Exhibit A and incorporated herein by reference for all intents and purposes, but in no event not later than April 30, 2019.

7. **Termination of Agreement**

Either party may terminate this Agreement on thirty (30) days written notice to the other party. Segal will continue to provide services hereunder to the effective date of any such termination and will cooperate with the Client to provide for an orderly transition of the Services to the Client at the time of any such termination. Notwithstanding the foregoing, in the event that the Client is not current in the payment of Segal's invoices at the time that such notice is given, then Segal may choose not to provide Services during the aforementioned thirty (30) day period. Segal will render final billing to the Client after the date of any such termination, and the Client will pay the same in accordance with Section 4.

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8. Professional Standards

All Services will be performed by competent personnel with the care, skill, prudence and diligence under the circumstances that a prudent consultant would use in discharging its services and in accordance with applicable professional standards. If any element of the Services does not conform to the foregoing, Segal will re-perform such element in a manner that does conform, except that if such re-performance is impracticable, Segal will refund the fees allocable to such nonconforming element.

9. Confidentiality

Both parties acknowledge that in the negotiation and performance of this Agreement, confidential and proprietary information of each has been and will be made available to the other. The parties agree to use reasonable efforts to maintain the confidentiality of such material, but in no event lesser than was used with like material of the receiving party and not to make any internal use of such material not required or permitted under this Agreement. Neither party will disclose the information to any third party without prior written authorization from the disclosing party. The information received by a receiving party will only be used by those of its employees, agents and consultants whose duties justify the need for access to the information provided and who have agreed to abide by the obligations of secrecy and limited use commensurate in scope with this Agreement. These obligations will apply to verbal information as well as specific portions of the information that are disclosed in writing or other tangible form and marked to indicate its confidential nature. These obligations will not apply to any of the information which:

- i. Was known to the receiving party prior to receipt under this Agreement as demonstrated by the receiving party's records; or
- ii. Was publicly known or available prior to receipt under this Agreement, or later becomes publicly known or available through no fault of the receiving party; or
- iii. Is disclosed to the receiving party without restrictions on disclosure by a third party having the legal right to disclose the same; or
- iv. Is disclosed to a third party by the disclosing party without an obligation of confidentiality, unless such information must be retained by that party for that party to fulfill its legal or agreement obligations under this Agreement; or
- v. Is independently developed by an employee, consultant, or agent of the receiving party without access to the information as received under this Agreement; or
- vi. The receiving party is obligated to produce as required by law, lawfully issued subpoena, or court order, provided that the disclosing party has been given notice thereof and if there is sufficient time, an opportunity to waive its rights to seek a protective order or other appropriate remedy.

To the extent that particular information is subject to specific statutory confidentiality requirements (i.e. Texas Govt. Code, Chapter 5521, Open Records Act), the requirements of such statute, rather than this section, shall be controlling.

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10. **Independent Contractor**

Segal is an independent contractor. No provision of this Agreement or act of the parties hereunder pursuant to this Agreement will be construed to express or imply a joint venture, partnership, or relationship other than vendor and purchaser of the services. No employee or representative of Segal will at any time be deemed to be under the control or authority of the Client, or under the joint control of both parties. Segal is liable for all workers' compensation premiums and liability, and federal, state and local withholding taxes or charges with respect to its employees.

11. **Subcontractors**

Any subcontractors to be utilized on this project will be subject to the Client's approval.

12. **No Assignment**

This agreement may not be assigned by either of the parties without the written consent of the other party.

13. **Force Majeure**

Segal will not be liable for any delay in performance or inability to perform due to force majeure, including without limitation any acts of God, acts or omissions of the Client, major equipment failures, fluctuations or non availability of electrical power or telecommunications equipment, or other conditions beyond the control of Segal. If Segal's performance is delayed by force majeure, Segal will discuss the situation with the Client and agree upon an extended period for performance. If an event of force majeure continues for more than thirty (30) days, either party may, at its option, terminate this Agreement and any Statements of Work thereunder. Segal will render a final billing to the Client after the date of any such termination, and Client will pay the same in accordance with Section 4.

14. **Third Party Beneficiaries**

This Agreement is for the benefit of the parties to the Agreement and does not confer any rights or privileges upon any third parties.

15. **Dispute Resolution**

- a. **Mediation.** Any disputes between the parties hereto are subject to non-binding mediation in accordance with the Judicial Arbitration and Mediation Service ("JAMS") as a condition precedent to the commencement of any legal proceeding hereunder.
- b. **Waiver of Jury Trial.** Each party hereby waive any right to a trial by jury in any action, suit, or proceeding arising out of this agreement, or any other agreement or transaction between the parties.
- c. **Notice.** In the event that either party believes that the other party has not complied with its obligations hereunder, such party shall send written notice of such non-

compliance to the other party. In the event that such other party does not cure such non-compliance within thirty (30) days of the date of such notice, then the party sending notice may avail itself of the terms of Section 15A above.

16. Damages

In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, will Segal, or any of its respective directors, officers, employees or agents, be liable for (i) special, incidental, exemplary, punitive, consequential, or indirect damages, including without limitation lost sales, profits or revenue, or claims for such damages, (ii) any losses or damages connected with, or resulting from any software, hardware, or services provided by Segal or any third party.

17. Conflict of Interest

Segal hereby affirms that there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a Conflict of Interest. A Conflict of Interest means that because of other activities or relationships with other persons, Segal or its subcontractor is unable or potentially unable to render impartial assistance or advice to the Client, or Segal's objectivity in performing the agreement work is or might be otherwise impaired.

If an actual or potential Conflict of Interest arises subsequent to the date of this agreement, Segal shall make a full disclosure in writing to the Client of all relevant facts and circumstances. This disclosure shall include a description of actions that Segal has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. Segal will continue performance of work under the agreement until notified by the Client of any contrary action to be taken.

18. Non-Discrimination

Segal agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth the substance of this clause.

19. Audit of Segal's Fees

Upon reasonable notice and during normal business hours, the Client reserves the right to audit or cause to be audited Segal's books and accounts with respect to fees and expenses under this Agreement at any time during the term of this Agreement and for three years thereafter except for confidential or proprietary information or trade secrets of Segal or any third party.

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20. Notices

All notices, claims, and approvals given under this Agreement must be in writing and delivered in person, by first class or express mail or facsimile addressed a set forth below or such other address that a party gives by notice. Notice given in accordance with this subsection will be deemed given when received.

- a. If to the Client: Mr. Leroy Medford
Commissioners Court Administrator
Webb County Courthouse
1000 Houston St., 2nd floor
Laredo, TX 78040
- b. Copy to: Nathan Bratton
Civil Legal Director
1000 Houston St., 2nd floor
Laredo, TX 78040
- c. If to Segal: Ruth Ann Eledge
Vice President
Segal Waters Consulting
5057 Keller Springs Road, Suite 110
Dallas, TX 75001
- d. Copy to: Margery Sinder Friedman
General Counsel
The Segal Company
333 West 34th Street
New York, NY 10001-2402

21. Amendment or Modification

No amendment or modification of this Agreement shall be valid or binding unless set forth in writing and duly executed by the parties hereunder.

22. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and it supersedes all prior oral or written agreements, commitments or understandings with respect to such matters.

23. Severability

The invalidity, in whole or part, of any provision of this Agreement will not affect the remainder of that provision or this Agreement.

24. **Business Associate Agreement**

The parties, if required by law, shall enter into a business associate agreement, which shall be annexed hereto as Exhibit B.

25. **Waiver of Default**

Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether such default is similar.

26. **Inconsistencies.**

Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

27. **Headings.**

The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

28. **-Counterparts.**

This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

29. **Terminology and Definitions.**

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

30. **Rule of Construction.**

The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

31. **Immunity.**

Webb County does not waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, offices, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.

32. **Legal Compliance.**

The parties hereto agree to comply fully with all applicable federal, state and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this agreement. This agreement is subject to all applicable present and future valid laws governing the Juvenile Justice Programs applicable to school district and/or County Juvenile Probation Departments. In the event that any of the parties hereto are required by law or regulation to perform any act inconsistent with this agreement, or to cease performing any act required by this agreement, this agreement shall be deemed to have been modified to conform with the requirements of such law, regulation or rule.

33. **Construction of Laws and Jurisdiction of Courts**

This Agreement will be governed in all respects by the laws of **Texas**, without regard to any conflicts of law principle, decisional law, or statutory provision, which would require or permit the application of another jurisdiction's substantive law and shall be enforced in Webb County, Texas.

34. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

35. **Duly Authorized Signatures**

For the Client:

The undersigned, **Honorable Tano E. Tijerina, County Judge of Webb County, TX** and as such has been duly authorized by the Client to sign this Agreement on behalf thereof.

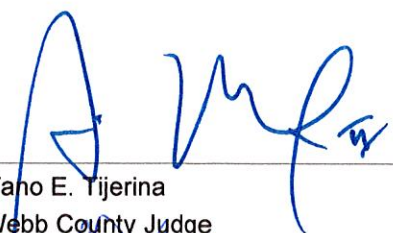

For Segal:

The undersigned **Ruth Ann Eledge is Vice President** of Segal and as such is duly authorized to sign this agreement in behalf thereof, thereby binding Segal to the provisions of this Agreement.

In Witness Thereof, the parties have executed this Agreement as of the date hereinabove set forth.

WEBB COUNTY, TEXAS

11/27/2018
Date


By: Tano E. Tijerina
Webb County Judge
FOR: 
Witness

THE SEGAL COMPANY (Western States) Inc., d/b/a Segal Waters Consulting

11/20/2018
Date

C. Eledge
By
Brian Lull
Witness

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:



Nathan R. Bratton
General Counsel *Final Approval Commissioners Court*
Civil Legal Division* *11/26/2018*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).