

CONSULTING AGREEMENT

This Agreement between **Webb County, Texas, a political subdivision of the State of Texas acting by and through its Commissioners Court** (the “Client”) and **Capex Consulting Group** (hereinafter “Consultant”) is entered into as of **October 22, 2020**.

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

1. Description of Services

Consultant shall provide to the Client the services as:

- 1.) Preparation of project economic impact analysis.**
- 2.) Prepare and manage timeline of events required by statute to include all public notices.**
- 3.) If needed, develop County Guidelines and Criteria for Granting Tax Abatements.**
- 4.) Development, assistance with developer input, processing, and presentation to Commissioner's Court of Application for Tax Abatement and Designation of Reinvestment Zone.**
- 5.) If applicable, offer mechanism to ensure future PILOT revenues are restricted to precinct/district of origin.**
- 6.) Coordination with County Legal Counsel.**
- 7.) Provide background on separated material and labor agreements and recommend structure, as applicable.**
- 8.) Establish restricted revenue accounts, if applicable.**
- 9.) Define estimated taxable value or total range of taxable values of the project or facility for which abatement is sought.**
- 10.) Periodic Reporting to Commissioner's Court as requested.**
- 11.) Take the lead on the development, negotiation, and final execution of a Tax Abatement Agreement that provides maximum economic benefits to Webb County.**
- 12.) Services related to recovery of funds from entity responsible for County Road(s) damaged by existing solar farm construction activities.**

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 Consultant 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. **Information Request.** Consultant will prepare a detailed information request outlining what is necessary to perform these services.

Upon receipt of the information, Consultant will examine it for missing information and internal consistency.

- b. **Timely Provision of Information.** Client will assure that its staff and other professionals and consultants, if any, cooperate with Consultant and provide the information requested or needed by Consultant on a timely basis.

4. **Payment Terms**

- a. **Fee for Services.** The fee for providing the basic services described is up to THIRTY-THOUSAND DOLLARS (\$30,000.00) commencing **October 22, 2020**.

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.

Travel expenses for meetings scheduled is included for up to _____ meetings.

The fee is for the services and on-site meetings described herein. Should the County request additional services or additional on-site meetings, additional charges would be applicable subject to written approval of Client.

If this Agreement is terminated or authorized services or projects are suspended, Consultant 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. Consultant will provide an estimate of such charges before the work is commenced and in agreed to in writing by Client.

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

5. **Non-Appropriation**

Funding for this Agreement between the Client and Consultant 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 October 22, 2020 and continue in effect until _____, 20__.

7. **Termination of Agreement**

Either party may terminate this Agreement on thirty (30) days written notice to the other party. Consultant 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 Consultant's invoices at the time that such notice is given, then Consultant may choose not to provide Services during the aforementioned thirty (30) day period. Consultant 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.

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, Consultant will re-perform such element in a manner that does conform, except that if such re-performance is impracticable, Consultant 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.

10. **Independent Contractor**

Consultant 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 Consultant will at any time be deemed to be under the control or authority of the Client, or under the joint control of both parties. Consultant 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**

Consultant 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 Consultant. If Consultant's performance is delayed by force majeure, Consultant 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. Consultant 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 Consultant, 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 Consultant or any third party.

17. **Conflict of Interest**

Consultant 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, Consultant or its subcontractor is unable or potentially unable to render impartial assistance or advice to the Client, or Consultant'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, Consultant 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 Consultant has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. Consultant will continue performance of work under the agreement until notified by the Client of any contrary action to be taken.

18. **Non-Discrimination**

Consultant 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 Consultant's Fees**

Upon reasonable notice and during normal business hours, the Client reserves the right to audit or cause to be audited Consultant'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 Consultant or any third party.

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: Webb County
Honorable Tano E. Tijerina
Webb County Judge
1000 Houston, Third Floor
Webb County

Laredo, TX 78040
- b. Copy to: Nathan Bratton
Civil Legal Director
1000 Houston, Second Floor
Laredo, TX 78040
- c. If to Consultant: Capex Consulting
Attn: Mr. Jeff G. Snowden
3245 Main Street, Suite 235-171
Frisco, Texas 75034

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. 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.

25. 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.

26. **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.

27. **-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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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.

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

34. **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 Consultant:

The undersigned **Jeff G. Snowden** is a **Principal** of Consultant and as such is duly authorized to sign this agreement on behalf thereof, thereby binding Consultant to the provisions of this Agreement.

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

WEBB COUNTY

CONSULTANT

Tano E. Tijerina
Webb County Judge

Jeff G. Snowden
Principal

Signed this _____ day of _____, 2020

Signed this _____ day of _____, 2020.

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:

Nathan R. Bratton
General Counsel
Civil Legal Division*

*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).