

COUNTY OF WEBB } {

2024 JAN 23 AM 9: 06

WEBSITE DESIGN AGREEMENT BETWEEN WEBB COUNTY AND AXS DESIGN
FOR THE TEXAS EMERGENCY NETWORK DIVERSION (TEND) COURT, OFFICE
OF THE GOVERNOR GRANT FUND NUMBER 4325003 *MCW*

This Agreement (hereinafter "Agreement" and/or "Contract") is made by and between Webb County for the benefit of the Webb County Texas Emergency Network Diversion (TEND) Court (hereinafter referred to as "County") and Armando Saldaña d/b/a AXS Design ("AXS" and/or "Designer").

RECITALS

WHEREAS, Webb County by and through the Texas Emergency Network Diversion (TEND) Court desires to hire a Designer to create a Website for the TEND Court; and

WHEREAS, AXS Design is a company that designs websites; and

WHEREAS, It is mutually desired between Webb County and AXS Design (hereinafter referred to as the "Parties") that a website project ("Project") and the specific requirements of the TEND Court be made part of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. TERMS AND CONDITIONS

1. BASIC TERMS:

1. Contract Term: One (1) year, beginning October 1, 2023, and ending September 30, 2024 (the "Initial Term"), unless extended as provided in this Agreement or unless terminated sooner pursuant to this Agreement. This Agreement may be extended for an additional one-year term beginning on October 1, 2024, and ending September 30, 2025 (hereinafter "Renewal Term") upon approval by Commissioners Court: in the following manner:
 - a. AXS shall provide COUNTY with written notice of AXS desire to renew this Agreement ("Renewal Notice") no less than ninety (90) days preceding the expiration of the Initial Term. Within forty-five (45) days of receipt of the Renewal Notice, COUNTY shall provide AXS written notice of COUNTY'S decision on whether to renew the Agreement. Such determination shall be in the sole discretion of COUNTY.
 - b. COUNTY and AXS shall execute an amendment to this agreement to acknowledge acceptance of the Renewal Term; wherein the terms and conditions of this Contract (including any authorized amendments) shall remain the same.

2. RESPONSIBILITIES OF AXS:

1. **Create the TEND Court Logo**, the logo will incorporate the infinity symbol and use hands joining with the words *Tending to Youth & Recognizing Their Achievements!* creating the TEND Court brand identity.
2. **Create a six-page website** for the TEND Court encompassing graphics with consideration to the viewing public, the TEND Court audience, community, and families, including a Quick Exit button. The six-page website will be as follows: Homepage – TEND Court Information, About Us – How the TEND Court works, the Community, Youth, and Foster Family engaging and informational pages, and Contact Us – dialog box method to fill and submit.
3. **Annual Hosting Fee** – This is an annual fee for hosting the website on AXS Design server with an SSL Certificate. This fee does not include any additional pages or revisions to the website. This fee shall be chargeable at the rate of Three Hundred (\$300) Dollars per year.
4. **Future Edits**. Any future revisions shall be chargeable at an hourly rate of Fifty (\$50) Dollars. This fee is for any future new add-ons (e.g., graphics, new pages, items/sections that are not already on the website pages). _____.
5. **Completion of Project**. Completion of the project shall be no later than March 8, 2024; failure to complete the project timely may result in losing the Grant funds intended to complete this project. Should such failure occur then Webb County will have no liability or duty to pay AXS Design for any and all work performed.

3. RESPONSIBILITIES OF COUNTY:

1. **Payment**. The Parties agree to the following Payment and Payment Terms:

Total two thousand nine hundred fifty dollars (\$2,950) Fee for Services: TEND COURT Logo/Brand for two hundred fifty dollars (\$250), TEND Court Website two thousand four hundred dollars (\$2,400), and the Annual Hosting Fee three hundred dollars (\$300).

Upfront Fee (Once the website template is selected 50% of total amount due) one thousand four hundred seventy-five dollars (\$1,475) (Due Before Project Start Date): January 30, 2024.

Remaining Balance one thousand four hundred seventy-five dollars (\$1,475) Due: 30 days after the project is completed.

II. MISCELLANEOUS TERMS:

1. **Confidentiality.** During the course of this Agreement, it may be necessary for the County to share proprietary information, including trade secrets, industry knowledge, and other confidential information, with the Designer in order for the Designer to complete the Website in its final form. The designer will not share any of this proprietary information at any time, even after the Agreement is fulfilled. The designer also will not use any of this proprietary information for his/her personal benefit at any time, even after the Agreement is fulfilled.
2. **Ownership Rights.** The COUNTY continues to own any and all proprietary information it shares with the AXS Design during the term of this Agreement for the purposes of the Project. The designer has no rights to this proprietary information and may not use it except to complete the Project contemplated in this Agreement. Upon completion of the Agreement, the County will own the final website design. While the Designer will customize the County's Website to the County's specifications, the County recognizes that websites generally have a common structure and basis. The designer continues to own any and all template designs it may have created prior to this Agreement. AXS will only own the template it created as a result of this Agreement.
3. **Work Product Waiver.** All of Designer's work product under this contract shall become the property of the County without restriction on future use. Copies may be retained by Designer. By execution of this contract and in consideration of the fee for services to be paid under the contract, Designer hereby conveys, transfers and assigns to the County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the training materials and other agreed deliverables developed under this contract. Designer shall retain all records relating to this contract for three (3) years following termination, during which time County reserves the right to audit such records at its election. In performing services under this contract, the relationship between the County and Designer is that of an Independent Contractor. Designer shall exercise independent judgment in performing duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining how the Work is to be prepared. No term or provision of this Contract shall be construed as making Designer the agent, servant or employee of Webb County, or making Designer or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Webb County provides its employees.
4. **Representations and Warranties.**

Designer. The Designer represents and warrants that he/she has the right to enter into and perform this Agreement. The Designer further represents and warrants that he/she has the right to utilize and distribute the designs created for the County and

that such designs are not owned by anyone else to the Designer's knowledge. In the event that the Designer does not have these rights, the Designer will repay any associated damages the County may experience or will take responsibility so that the County does not experience any damages.

County. County represents and warrants that it has the rights to use any proprietary information, including, but not limited to trade secrets, trademarks, logos, copyrights, images, data, figures, content, and the like that it may provide to Designer to be included in this Website. In the event that County does not have these rights, County will repay any associated damages Designer may experience or will take responsibility so that Designer does not experience any damages.

5. **Disclaimer of Warranties.** The designer shall create a Website for the County's purposes and to the County's specifications. THE DESIGNER DOES NOT REPRESENT OR WARRANT THAT SAID WEBSITE WILL CREATE ANY ADDITIONAL PROFITS, SALES, EXPOSURE, BRAND RECOGNITION, OR THE LIKE. THE DESIGNER HAS NO RESPONSIBILITY TO THE COUNTY IF THE WEBSITE DOES NOT LEAD TO THE COUNTY'S DESIRED RESULT(S).

4. **LIMITATION OF LIABILITY. DESIGNER AGREES TO DEFEND, INDEMNIFY AND HOLD COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DESIGNER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF DESIGNER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES OR SUB-SERVICE PROVIDERS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF COUNTY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE DESIGNERS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH THE DESIGNER AND COUNTY, RESPONSIBILITY,**

IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE COUNTY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

5. **Legal and Binding Agreement.** This Agreement is legal and binding between the Parties as stated above. This Agreement may be entered into and is legal and binding both in the United States and throughout Europe. The Parties each represent that they have the authority to enter into this Agreement.
6. **Termination.** The County may terminate this Agreement in the event of a material breach of the terms of this Agreement provided the County gives AXS written notice of any alleged breach and such breach remains uncured for a period of 30 days following receipt of written notice to AXS. However, the County may elect to terminate this Agreement prior to its expiration without any contractual breach by either party by giving written notice to AXS by registered or certified mail or by fax on company letterhead and shall be deemed effective upon delivery.
7. **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.
8. **Severability.** Each paragraph and provision hereof is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
9. **Prohibition Against Assignment.** There shall be no assignment or transfer of this Agreement without the prior written consent of both parties hereto.
10. **Law of Texas.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be enforced in Webb County, Texas.
11. **Notices.** All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or forty-eight (48) hours after mailed to each party by certified mail, return receipt requested, postage prepaid.

12. **Amendment.** No changes to this Agreement shall be made except upon written agreement of both parties.
14. **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.
15. **Waiver.** The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.
16. **Counterparts, Facsimile Signature Delivery.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument. The parties acknowledge that the delivery of executed counterparts of this Agreement may be offered by facsimile transmission. This Agreement will be deemed effective as of the date signed by Customer.
17. **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.
18. **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.
19. **Immunity.** Webb County does not waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, council members, officers, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.
20. **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. 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.
21. **Non-Appropriations.** Webb County cannot warrant that funds will be available to pay for the funds through the end of the current and/or any future fiscal period, and

shall use the County's budgetary process to obtain funds to pay all payments in and through the end of this year's term or any future term. If our appropriations request to our commissioners court for funds is unable to pay for this agreement or is denied then this agreement may terminate on the earlier of the last day of the fiscal period or for which funds are available and have already been appropriated. Final payments will be made subject to the submission of documentation as stated in this agreement that evidences services rendered. The satisfaction of all obligations under this Agreement that are required to be provided to Webb County or its representative including the return of any documentation that must be preserved by the program and the County pursuant to federal and state laws or grant provisions will be required prior to any disbursement of payment.

22. **Delay, Loss, Damage.** Webb County shall not be responsible or liable for any loss, damage, detention or delay caused by labor trouble, strikes, lockouts, fire, explosion, theft, lightning, windstorm, earthquake, floods, storms, epidemics, pandemics, riot, civil commotion, malicious mischief, embargoes, shortages or materials or workmen, unavailability of material from usual sources, Government priorities or requests or demands of the National Defense Program, civil or military authority, war, insurrection, failure to act on the part of the Purchaser's or Schindler's suppliers, orders or instructions of any federal, state or municipal government or any department or agency thereof, Act of God, or by any cause whatsoever beyond its reasonable control. Dates for the performance or completion of work shall be extended to the extent of such delays.
23. **Service Fees.** The County agrees to pay AXS Design by the terms of this Agreement, However, AXS Design acknowledges that under Texas Government Code § 2251.021. **TIME FOR PAYMENT BY GOVERNMENTAL ENTITY.** A payment by a governmental entity under a contract is overdue on the 31st day after the later of:
- a. the date the governmental entity receives the goods under the contract;
 - b. the date the performance of the service under the contract is completed; or
 - c. the date the governmental entity receives an invoice for the goods or service.
 - d. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as 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.
 - e. Notwithstanding the finance charge, failure to pay invoices in accordance with and including applicable federal, state, and local taxes with such terms shall be considered a breach of this contract and could result in a discontinuance of our services without prior notice. AXS Design agrees the County shall have the right of offset money owed to such fees, regulatory taxes, state taxes and/or federal taxes by AXS Design against any charges for services rendered to Webb County.

25. **Disclosure.** DESIGNER is required to immediately or timely, as the case may be, disclose to Webb County and Appropriate Texas State Agency the following:
- a. If any Person who is an employee or director of DESIGNER is required to register as a lobbyist under Texas Government Code Chapter 305, at any time during the term hereof, DESIGNER shall provide Webb County and the appropriate State Agency timely copies of all reports filed with the Texas Ethics Commission as required by Chapter 305;
 - b. If any Person who is an employee, Sub-Service Provider, or director of DESIGNER is or becomes an elected official (i.e., an elected or appointed state official or member of the judiciary, or a United States congressman or senator), during the term hereof;
 - c. Report any actions or citations by federal, state, or local governmental agencies that may affect DESIGNER/INDEPENDENT SERVICE PROVIDER licensure status or its ability to provide Services hereunder.

The Parties agree to the terms and conditions set forth above as demonstrated by their signatures as follows:

“COUNTY”

Signed: 
By: _____
Date: _____

“DESIGNER”

Signed: Armando Saldaña
By: Armando Saldaña
Date: 12/19/23

EXECUTED and **AGREED** to as of the dates indicate below.

ATTESTED:



Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:



Jorge L. Treviño
Assistant General Counsel
Civil Legal Division

The General Counsel, Civil Legal Division's Office may only advise or approve contracts or legal documents on behalf of its clients. 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).

Passed and approved by the Webb County Commissioners Court
On 2023 item No.