

**PROFESSIONAL SERVICES AGREEMENT
FOR
PARKS MAINTENANCE FACILITY**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and Jaime Beaman AIA, Inc. dba CasaBella Architects (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Manager” shall mean the City Manager and/or his designee.

II. TERM

2.1 This agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in *EXHIBIT 1* which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed One hundred thirty-seven thousand seven hundred ninety dollars and zero cents(137,790.00) as total compensation, to be paid to Consultant as further detailed in Exhibit. 1.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such

questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any

other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Pflugerville
Attn: Patricia Davis, P.E.
City Engineer
P.O. Box 589
Pflugerville, Texas 78691

If intended for Consultant, to: Jaime Beaman AIA, Inc.
Attn: Jaime Beaman, AIA, President
3821 Juniper Trace, #104
Bee Cave, Texas 78738

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled “*City of Pflugerville, Parks Maintenance Facility*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor’s policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate coverage for: Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant’s performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant’s or its subcontractors’ performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT’S agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT’S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee,

consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY’S agent, the CITY’S employee or other entity, excluding the CONSULTANT or the CONSULTANT’S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT’S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker’s compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Ramirez – Simon (MEP), Studio 16:19 (Landscape Architecture), Gessner Engineering (Civil, Structural, Geotechnical Report, Surveying), Project Cost Resources (cost estimating). Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in

terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Exhibit "1" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

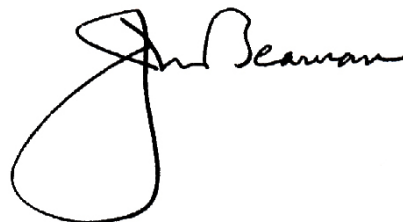
25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

25.6 Texas Government Code Mandatory Provision. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2271.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

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

**CITY OF
PFLUGERVILLE**

Jaime Beaman AIA, Inc. dba CasaBella
Architects



(Signature)
Printed Name: Sereniah Breland
Title: City Manager
Date: _____

(Signature)
Printed Name: Jaime Beaman, AIA
Title: President
Date: 4-22-2021

APPROVED AS TO FORM:



Charles E. Zech
City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

EXHIBIT 1



April 20, 2021

Mr. Shawn W. Cooper, PLA, CPSI
Parks Development Manager
Engineering Department
City of Pflugerville
P.O. Box 589
Pflugerville, TX 78691-0589

Reference: City of Pflugerville – Parks Maintenance Facility
Design Fee Proposal

Dear Mr. Cooper,

We appreciate the opportunity to submit this fee proposal to provide full AE design services for the new Parks Maintenance Facility to be located in 1849 Park, Pflugerville Texas.

Scope of Work

Programming

- Stakeholder meeting to review project requirements
- Develop a programming document to be used as reference for future phases of design.

Phase One – This preliminary design phase is to develop two design options; the 1st to be within the original budgeted amount of \$750,000, and the 2nd to look at how the design can be expanded to create a maintenance facility with all the components needed for a full-service facility.

Schematic Design/Design Development Phases

- Kick-off meeting to review Programming document and establish goals for both options of design to be developed during this phase.
- Develop two (2) site plan drawings that include at a minimum:
 - “Corral” (fenced in area for all parking, structures and support items defined in the programming document.
 - 40’ x 80’ pre-engineered metal building (PEMB)
 - Pole barns, or similar, for covered open air storage.
 - Parking for staff and visitors
 - Storm detention, if required.
 - Access drives connecting facility to park and future streets.
- Develop building floor plans showing the two (2) design options. The more expensive design is to assume the potential for expanding the original \$750,000 option to meet additional needs of the Parks Department.
- Prepare 3D renderings (at no additional cost)
- Outline Specifications
- Cost estimates
- Disciplines to be included in Phase One design
 - Architecture
 - MEP

- Structural
- Civil
- Landscape Architecture
- Additional services include:
 - Geotechnical Report
 - Topographical and Tree Survey

Phase Two – At the completion of Phase One design work, we will meet with stakeholders to review both design options and determine the next course of action which will include Construction Documents, Bid and Construction Administration phases of work. Services to be included are:

- Project meetings during design
- Development of Bid Documents – drawings and specifications
 - Includes Pflugerville staff reviews at 60% and 90%
- Permitting
- Internal Quality Control
- Update cost estimates
- Bid/Negotiation Phase services
- Construction Administration Phase services:
 - Periodic site meetings
 - Review of RFI's
 - Review of submittals
 - Project close-out

Schedule – After Notice to Proceed, Phase One services will take approximately 2 months and Phase Two services approximately 4-5 months. After Bid Phase is complete, Construction Administration Phase is assumed to be approximately 6-8 months.

Fee Proposal – We have broken down our fees into two separate groups:

Basic Services – including Architecture, MEP Engineering, Structural Engineering, Civil Engineering, Landscape Architecture, and Cost Estimating.

Programming	\$5,000
SD Phase	19,560
DD Phase	\$25,300
Construction Document Phase	\$48,480
Bid Phase	\$5,780
Construction Administration	\$20,380
TOTAL BASIC SERVICES	\$124,500

Additional Services

Geotechnical Report	\$4,290
Topographic and Tree Survey	\$7,500
TOTAL ADDITIONAL SERVICES	\$11,790

EXCLUSIONS

Permitting Fees
ADA Review Fees

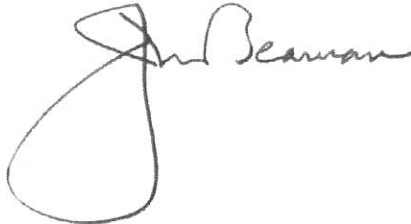
Reimbursables will be submitted at cost. We anticipate reimbursables to be in the range of \$1,500.00. The reimbursables are calculated as follows:

- \$1,000.00 for reproduction
- \$500.00 for courier

CasaBella Architects hourly rates are as follows:

Principal	\$200
Project Manager/Architect	\$160
Intern	\$125
Clerical	\$60

With warmest regards,

A handwritten signature in black ink, appearing to read "Jaime Beaman". The signature is fluid and cursive, with a large loop at the end.

Jaime Beaman, AIA, LEED AP
President

Attachments:

Fee Schedule
Project Schedule
Subconsultant Proposals

Budget Estimate Worksheet						
Pflugerville Parks Maintenance Facility						
CasaBella Architects						
20-Apr-21						
Task Description	CasaBella Architects			Total Fee		
	Principal	Project Architect	Support Staff			
	\$ 200.00	\$ 160.00	\$ 125.00			
<i>Phase A: Programming</i>						
Stakeholder Meeting	2	2	4	\$	1,220.00	
Review Existing Documents	-	4	-	\$	640.00	
Site Assessment	2	2	4	\$	1,220.00	
Develop Programming Document	1	8	4	\$	1,920.00	\$ 5,000.00
<i>Phase A: Schematic & Design Development Phase</i>						
Stakeholder Meeting to Review Programming Doc	2	2	4	\$	1,220.00	
Develop two (2) site plans	4	8	24	\$	5,080.00	
Develop two (2) floor plans	4	16	32	\$	7,360.00	
Prepare 3D renderings (no cost)	-	-	-	\$	-	
Outline Specifications	2	4	-	\$	1,040.00	
Cost estimates (for both options)	2	4	2	\$	1,290.00	
Internal Quality Control	4	8	-	\$	2,010.00	\$ 18,000.00
<i>60% CD Phase</i>						
Review Meeting with Stakeholders	2	2	2	\$	970.00	
60% Drawings	4	16	40	\$	8,360.00	
60% Specifications	4	16	4	\$	3,860.00	
Design Coordination with other consultants	-	4	2	\$	890.00	
Internal Quality Control	4	4	2	\$	1,690.00	\$ 15,770.00
<i>90% CD Phase (& 100% CD Phase)</i>						
Review Meeting with Stakeholders	2	2	2	\$	970.00	
60% Drawings	4	8	28	\$	5,580.00	
60% Specifications	2	4	2	\$	1,290.00	
Design Coordination with other consultants	-	4	2	\$	890.00	
Permitting	-	8	2	\$	1,530.00	
QA/QC	2	2	2	\$	970.00	\$ 11,230.00
<i>BID-AWARD-EXECUTION PHASE</i>						
Pre-bid Conference	2	4	2	\$	1,290.00	
Prepare Addenda	-	8	4	\$	1,710.00	\$ 3,000.00
<i>CONSTRUCTION PHASE</i>						
Project Meetings/Site Visits	4	6	24	\$	4,760.00	
Review Submittals	-	4	16	\$	2,640.00	
Respond to RFI's	-	4	16	\$	2,640.00	
Prepare As-built Drawings	-	2	4	\$	820.00	
Final Close-out	-	4	4	\$	1,140.00	\$ 12,000.00
Total Basic Services Fee (CasaBella Architects only)						\$ 65,000.00
Subconsultant Fees (see attached proposals)						
Ramirez Simon (MEP)					\$	8,500.00
Gessner (Structural)					\$	2,920.00
Project Cost Resources (Cost Estimating)					\$	4,000.00
Gessner (Civil)					\$	31,200.00
Studio 16:19 (Landscape Architecture)					\$	12,880.00
Total Basic Services Fee					\$	124,500.00
Reimbursables					\$	1,500.00
TOTAL					\$	126,000.00
Additional Services						
Geotech (Gessner)					\$	4,290.00
Topo/Tree Survey (Gessner)					\$	7,500.00
TOTAL					\$	11,790.00

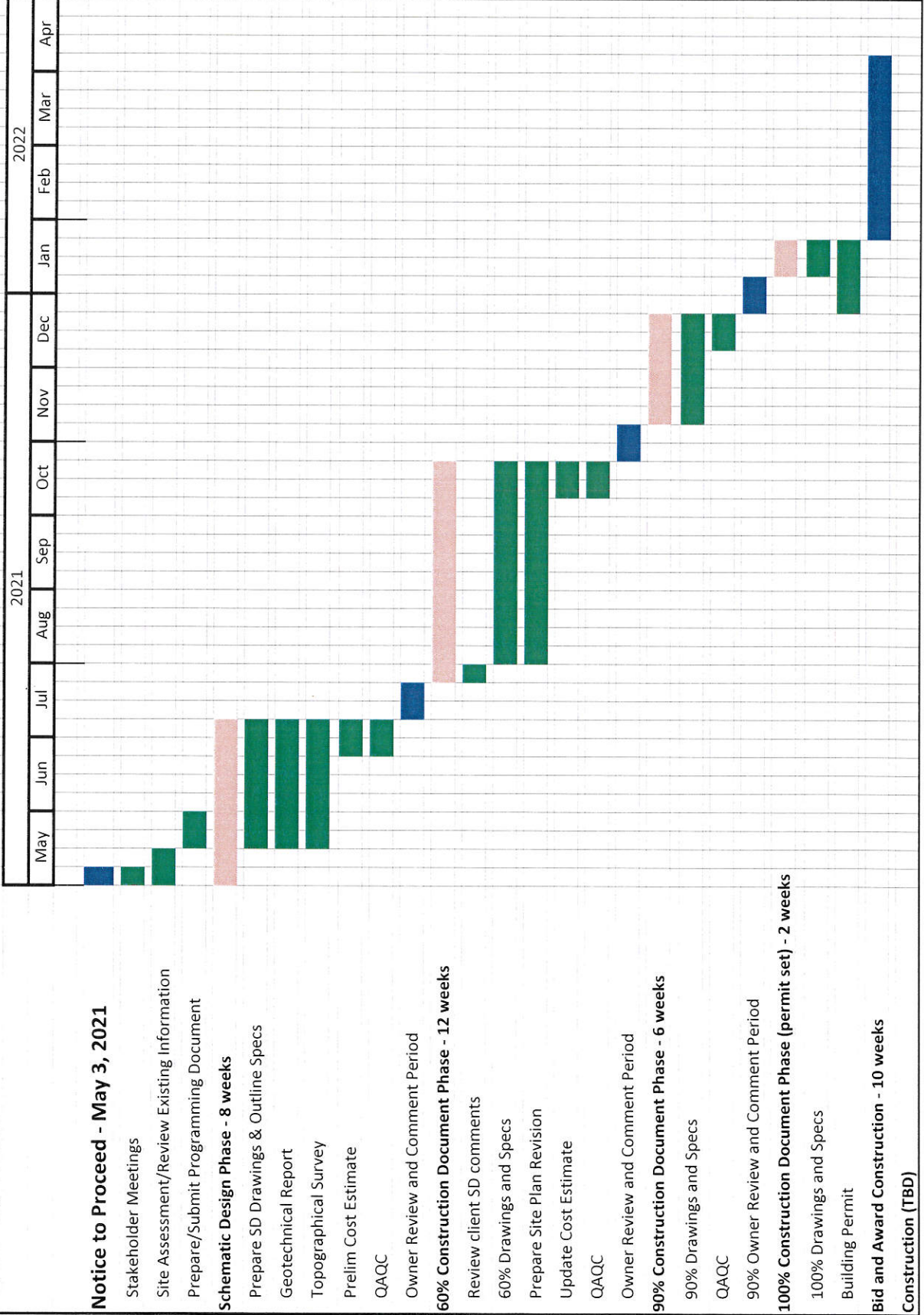
Pflugerville Maintenance Barn

	PHASE ONE				PHASE TWO				Subtotals
	Programming	SD	DD	CD	Bid	CA			
BASIC SERVICES									
CasaBella Architects	5000	9000	9000	27000	3000	12000	65000		
Ramirez Simon (MEP)		2000	2000	3000	300	1200	8500		
Gessner (Structural)		0	980	1280	0	660	2920		
Cost Estimating		2500		1500			4000		
Gessner (Civil eng'g)		4680	7800	12480	1560	4680	31200		
Studio 16:19 (L Arch)		1380	5520	3220	920	1840	12880		
Subtotal Basic Services	5000	19560	25300	48480	5780	20380	124500		
ADDITIONAL SERVICES									
Geotech	\$ 4,290						4,290		
Topo Survey	\$ 7,500						7,500		
Subtotal	\$ 11,790						11,790		

City of Pflugerville
Parks Maintenance Facility

20-Apr-21

Proposed Design Schedule



Ramirez - Simon **E**ngineering, LLC

April 7, 2021

Ms. Ellen Beaman
CasaBella Architects
3821 Juniper Trace, Suite 104
Austin, TX 78738

SUBJECT: City of Pflugerville Maintenance Barn ME Fee Proposal

Dear Ellen,

Thank you for the opportunity to submit this proposal to provide Mechanical/Electrical engineering services on this project. This proposal describes our Project Understanding, Scope of Services, proposed Compensation, and proposed Terms and Conditions for the work.

Project Understanding

The City of Pflugerville has \$750,000 budgeted for this project. They desire to seek additional funds but the design team will perform a feasibility study and cost estimate to determine what can be afforded within the current budget and also the cost required to meet their ultimate scope desires. This will be performed as Phase 1.

Phase 2 will include the design of what is determined in Phase 1 to be afforded within the current budget of \$750,000. If the city obtains additional funding for additional scope, the design team shall negotiate appropriate fees at that time. At this time, no restrooms or other plumbing/fire protection are anticipated to be in the new building.

Scope of Services

Ramirez Simon Engineering (RSE) shall coordinate with architect to define scope and estimate cost defined by the Phase 1 analysis. If project moves to Phase 2, RSE shall design and provide drawings/specifications for distribution to bidding contractors and the city permit office by others. RSE shall coordinate design with architect and owner prior to issuing documents to bidders/city. RSE shall complete M&E Comcheck forms for submission to the city by others. RSE shall review all submittals required by our documents, respond to all ME related RFIs and make one (1) construction observation at appropriate stage of completion.

Exclusions:

- Plumbing design
- Construction cost estimating
- Specialty lighting design
- Fire Protection design
- Energy Modelling

Compensation

We propose to provide Phase 1 services for a lump sum fee of **\$2,000** and Phase 2 services for a lump sum fee of **\$6,500** (\$6,000 Design + \$500 CA).

Ramirez - Simon Engineering, LLC

4/7/21 Beaman, pg. 2

Terms and Conditions

We anticipate that this task will be performed under the conditions of this letter agreement. Please acknowledge agreement and provide Authorization to Proceed by signing below and returning a copy to RSE. We shall invoice monthly on a percentage of completion. Invoice shall be due no later than 30 days from when architect gets paid by owner.

Thank you for the opportunity to submit this proposal. We look forward to working with you on this project. Please contact me if you have any questions.

Best Regards,

RAMIREZ SIMON ENGINEERING, LLC



Steven Simon, PE
Principal

Authorization to Proceed

Date

April 5, 2021

CasaBella Architects

Jamie Beaman, AIA
3821 Juniper Trace, Suite 104
Austin, TX 78738
[o] 512-485-5700
jbeaman@casabella-architects.com

**Re: Landscape Architecture Services for the City of Pflugerville
1849 Maintenance Barn Facility**

Dear Catherine:

We first want to say, 'Thank You' for the opportunity to collaborate with CasaBella Architects as part of project development team for the **City of Pflugerville [City]** (the "Owner").

Thus, **studio16:19, LLC**, (the "Consultant") is pleased to submit this proposal/agreement for Professional Services to assist **CasaBella Architects** (the "Client") with the required Landscape Architecture Services for **1849 Maintenance Barn Facility – Pflugerville, TX** (the "Project"). Please refer to "Attachment A".

The Planning/ Landscape Architecture Scope of Services (schematic design through construction phase) shall basically consist of collaboration with the Client, Owner, and design team members through the site development / design process to ensure the remodel/ upgrades meet required landscape and irrigation guidelines per the Owner's program as well as the respected City/ County entities.

▪ **Project Scope Understanding:**

- The following outlines the current Scope understanding for the proposed Project:
 - a. Provide code required tree(s), landscape, and turf around the proposed additions to match existing landscape condition around the park facility.
 - b. Provide Irrigation Design around proposed additions as the facility has a permanent irrigation and the proposed additions will require a new/ retro fit to the system.
 - c. Based on prior City projects of similar nature, this Project will need to need to adhere to the City of Pflugerville Codes & Ordances for landscape and irrigation.

Although the Project scope will refine as the Project progresses, the follow design deliverables shall apply:

▪ **Schematic Design** – coordination with the Owner/ Client for the following:

- site inventory/ code analysis/ verification of Owner requirements
- develop preliminary written narrative documenting landscape requirements based on proposed program and existing and proposed conditions for the overall project scope.
- develop imagery board of proposed plant palate and hardscape materials for the project.
- Attend one (1) design team/ owner review meeting for Schematic Design Task



- **Design Development (permit phase)**

Upon Client's authorization to commence with design development, the Consultant shall prepare design development drawings/ site development permit drawings. Deliverables shall include:

- Prepare Landscape Permit Plan(s) – documenting plant names (common and botanical), location, size, quantity, general appearance/ condition, and planting details, notes and specifications as the submittal for a Site Development Permit and submit to the Development Services Center of the City in accordance with City requirements with documents required for permitting.
- Prepare an over-all refined design plans and supplemental graphics, imagery, details, and material selections for projects improvements that will culminate in a sixty percent (60%) construction drawings.
- Coordinate design development drawings with Client & design team members
- Agency Review/ Permitting – coordination with the City Development staff to resolve questions or comments that arise during the SDP review process in regard to the City requirements.
- Provide (1) revision/ refinement to design development drawings per Client meeting
- Prepare informal digital submittal(s) for team collaboration throughout the design process.
- Attend one (1) design team/ owner review meeting for Design Development task

- **Construction Documentation (100% for construction plans)**

Upon Client's approval of the Design Development drawings, the Consultant will develop working/construction drawings and technical specifications necessary to construct the work in collaboration with design team. Deliverables shall include:

- 100% drawings that incorporate the approved Landscape Permit Plans and City staff comments of the Site Development Permit set & License Agreement including the addition of:
 - Detailed Landscape Planting Plan(s), Notes & Details (refinement of permit set if required)
 - Detailed Irrigation Plan(s), Notes & Details - detailed design plans documenting areas to be irrigated, point of connection, meter location, controller location, sleeving locations, incorporation of specific zones, hydraulic calculations, mainlines, and detailed head layout for turf areas and dripline layout for all landscape planting beds including irrigation details and specifications, and irrigation calculations
- Review 90% construction drawings, specifications with Client and update per Client comments. (One round of client comments incorporated into 100% set.)
- Prepare (100%) construction drawings, specifications, and associated and proposed project items with updated quantities for bid/ final pricing.
- Prepare informal digital submittal(s) for team collaboration throughout the design process.
- Attend one (21) design team/ owner review meeting for Construction Document task

- **Procurement Phase Services** – the Consultant will collaborate with the Client during the Bidding process for selection of a qualified landscape contractor. Task items include bidding coordination, clarification of contractor RFI(s), Bid Tab reviews, and negotiation of best qualified bid.



- **Construction Phase Services** – coordination and oversight on items as requested by Client, Owner, or Contractor that could include but not be limited to RFI responses and coordination, shop drawing reviews, or coordination with contractor on various issues that arise during the build/ installation process. The Consultant will attend up to three (3) total project site visits including a project kick-off and remaining subsequent site visits as requested to verify that the approved documents are being carried out per plans, notes, details, and specifications. At Project Close Out the following to occur:
 - Punch List Development for Landscape & Irrigation scope during a final walk through once project is complete and ready for inspection.
 - Prepare and submit the Landscape Architect’s Concurrence letter for final acceptance.
 - Review as-built plans on a redlined set prepared by the Contractor for landscape and irrigation scope to codify a record set of drawings during the project close-out process.

All Planning/ Landscape Architecture Basic Services as directed by the Owner, Client, and/or others acting on the Owner/Client’s behalf will be billed based on an upset per each phase below for a not-to-exceed \$12,880, without Client/ Owners written approval:

▪ Schematic Design Phase	\$ 1,380
▪ Design Development Phase	\$ 5,520
▪ Construction Document Phase	\$ 3,220
▪ Procurement Phase	\$ 920
▪ Construction Phase	\$ 1,840

Our 2021 hourly rates are as follows if required for additional services above basic services:

▪ Principal Planner/Landscape Architect:	\$ 185.00/hr.
▪ Associate Principal Planner / Landscape Architect:	\$ 145.00/hr.
▪ Senior Associate Planner/ Landscape Architect:	\$ 115.00/hr.
▪ Associate Planner/ Landscape Architect:	\$ 90.00/hr.
▪ Staff Planner/ Landscape Designer:	\$ 75.00/hr.
▪ Administrative	\$ 65.00/hr.

Reimbursable Expenses, expenditures made by the Consultant, and its employees in the interest of the Project SHALL be included with in the lump sum fee above. Reimbursable Expenses include but are not limited to mileage, reproduction of documents, postage, and other, similar, direct Project-related expenditures

The parties agree to the following provisions with respect to this specific Proposal/Agreement:

- The Consultant is able to start our services upon written acceptance of this Proposal/Agreement.
- All deliverables are to be in digital PDF format unless otherwise indicated.
- This Scope of Work represents the entire understanding between the Client and the Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter.
- Meeting can be defined as in person office/ project site, virtual teams, and/or teleconference.



- Supplemental Services are in addition to the Basic Scope of Services and, when requested by the Client/ or Owner, either written or oral, shall entitle the Consultant to additional compensation beyond the original agreed Compensation stated herein. A Supplemental Fee will be agreed upon prior to commencing task/ service once the program/ scope has been finalized. The following Supplemental Services under this Agreement include but are not limited to:
 - *Three-Dimensional (3-D) Modeling/ Renderings for task beyond that listed in Basic Services.*
 - *Design Phase/ Construction Phase - routine attendance at weekly/ biweekly design team meetings.*
 - *ANY Sub-Consultant services not currently identified in Basic Services.*
 - *ANY professional service or task not currently identified in Basic Services.*
 - *Agency Review - More than (2) two rounds/submittals/comment responses for City Permitting.*
 - *Value Engineering Phase including redesign of approved plans due to project cost control.*
 - *TAS Consultant and associated review fees.*
 - *Rainwater Harvesting System Design*

Once you have had the opportunity to review the proposal, please feel free to contact **studio16:19, LLC** should you have any questions, comments, or require clarification to what is proposed. You may reach me via e-mail at brent@studio1619.com or by phone at **512.534.8680**. If the project owner concurs with the terms of the Proposal/Agreement, please sign in the place provided towards the end of the document and return a signed digital and/or hard copy for formal execution. This Proposal is valid for sixty (60) days.

Respectfully submitted,
studio16:19, LLC

Accepted by:
CasaBella Architects

Brent A. Baker, ASLA, CLARB
 managing principal

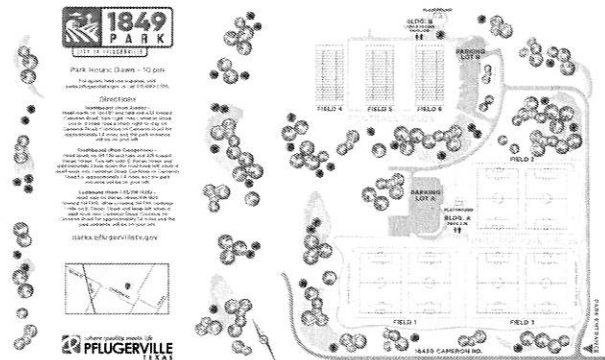
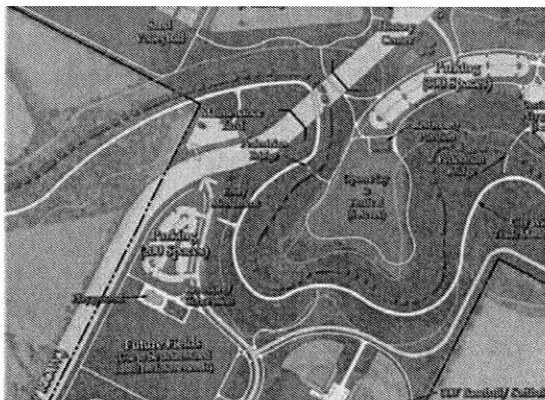
.....
 authorized representative title

.....
 printed name date

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects and landscape architects in Texas. For additional information, please contact the Texas Board of Architectural Examiners (TBAE); P.O. Box 12337; Austin, TX 78711-2337; Telephone: (512) 305-9000 / Fax: (512) 305-8900.

'ATTACHMENT A'
PROPOSED PROJECT / SITE PLAN

City of Pflugerville – 1849 Proposed Maintenance Barn Facility –
16430 Cameron Road - Pflugerville, TX



Make the City of Pflugerville - Parks Maintenance Facility at 1849 Project happen.



GESSNER
ENGINEERING

Pflugerville, Texas
Proposal Number: P21-0223-03

Geotechnical

PREPARED FOR:

Jaime Beaman
CasaBella Architects
3821 Juniper Trace, Suite 104
Austin, Texas 78738
512.458.5700
jbeaman@casabella-architects.com

GESSNER CONTACT:

Mike Fucianri, P.E.
mfucianri@gessnereng.com
1-877-GESSNER

SUBMITTED DATE:

4/5/2021

VALID THROUGH:

7/5/2021

Gessner Engineering presents this Agreement to provide engineering services for the above referenced project. The scope and fee of this project is based on the information provided to Gessner Engineering on March 26, 2021, and can be found on the supporting pages. We appreciate the opportunity to provide these services and look forward to being a part of your project team.

PROJECT DESCRIPTION:

The project is comprised of the proposed single-story building with a footprint of approximately 3,200 square feet. Should the total square footage change, Gessner Engineering reserves the right to modify fees accordingly. Gessner Engineering anticipates the building structure to be a pre-engineered metal building and the foundation to be stiffened slab-on-grade. Gessner understands that the project area is currently heavily wooded. Our assumption is the project area will either be cleared by others, or it will be acceptable to drill our test borings in areas as close to the project location as reasonably possible.

By signing as the responsible party, you authorize Gessner Engineering to proceed and acknowledge your agreement to the services defined, as well as the attached terms and conditions. Upon signing, you also agree that you will be billed directly as the Client. If you are requesting this proposal on behalf of someone else, please have them add their contact and billing information and sign in the section below. Please note that this agreement must be signed by the responsible party.

RESPONSIBLE PARTY

Name

Billing Address

City, State, Zip

Phone

Email

Client (Signature)

Date

Printed Name and Title

Johanna R. Gessner

Gessner Engineering Representative (Signature)

Johanna Gessner, CEO

Printed Name, Title

PROJECT SCOPE

INCLUDED	EXCLUDED
<p>GEOTECHNICAL ENGINEERING</p> <ul style="list-style-type: none">✓ Contacting Texas 811 for public utility locates✓ Mobilization to the site located in Pflugerville, Texas✓ Drilling 2 test borings to a depth of 25 feet, or drill refusal depth, within the perimeter of the proposed Maintenance Barn.✓ Drilling 3 test borings to a depth of 6 feet, or drill refusal depth, within the perimeter of the proposed new pavements.✓ Laboratory testing phase specified for this project✓ Project layout with boring location map✓ Logs of borings depicting field and laboratory test results✓ Written report providing geotechnical engineering parameters for: site and subgrade preparation, foundation recommendations, and paving recommendations✓ Limited construction administration services, which may involve phone calls or meetings to discuss the issued report with the owner or other design consultants, not to exceed one (1) hour of engineering time. Services outside this limit will be billed as additional fees.	<p>GEOTECHNICAL ENGINEERING</p> <ul style="list-style-type: none">× Site clearing or staking× Site access for unusually soft, hard, steep or wet surfaces, as well as sites with narrow or otherwise difficult access points× Drilling outside of standard business hours× Standby time for sites not prepared or available× Off-site material to backfill boring holes× Repair to landscape or finishes due to drill rig access× Traffic control plan and any corresponding signage× Groundwater studies beyond boring observations× Environmental testing or sampling of hazardous materials× Development of parameters for facilities beyond the scope of geotechnical work× Geotechnical recommendations for location other than the locations specified in this proposal× Settlement analysis and global stability analysis× Retaining wall, pool, pond, post-tension foundation system, and pier and beam foundation system construction and design recommendations× Pavement design× Foundation design (included in structural scope of work)× On-site observations of foundation installation× Construction materials testing
<p>STRUCTURAL ENGINEERING</p> <ul style="list-style-type: none">✓ Design of foundation (Design of foundation systems beyond those anticipated may result in additional services)✓ Construction documents with notes (Appreciable changes to the design following the design development phase may result in additional fees)✓ Review geotechnical report and foundation options with client✓ Code evaluation for determination of loads✓ Design of anchor bolts to resist provided loads <p><i>Construction Administration</i></p> <ul style="list-style-type: none">✓ Reviews of shop drawings and submittals. More than two reviews shall be invoiced as additional services.✓ Responses to contractor questions (RFI's)✓ One (1) site observation to review compliance with contract documents. Additional site observations will be invoiced as additional services. (Estimated lump sums may be provided upon request)	<p>STRUCTURAL ENGINEERING</p> <ul style="list-style-type: none">× Design of superstructure or its components× Geotechnical recommendations× Setting finish floor elevation, site layout, and site grading× Design of non-structural and site structural elements unless specifically listed in this proposal× Redesign caused by architectural changes that negate work completed. Redesign as described will be invoiced as additional services.× Design for flood provisions× Cost estimation and procurement services× Record drawings× Calculation of column reactions and design of base plates× Evaluation of existing structure (Not applicable to new construction)



PROJECT SCOPE

INCLUDED

CIVIL ENGINEERING

- ✓ Site plan showing site improvements including general utility and storm sewer layouts, fire lanes, parking lot, drive aisles, and accessible routes
- ✓ Drainage models, plans, and reports meeting jurisdictional requirements and providing necessary information for construction
- ✓ Utility models, plans, and reports showing proper analysis and design meeting jurisdictional requirements and providing necessary information for construction
- ✓ Grading models and plans showing necessary grades for positive drainage through the site
- ✓ Proper accessibility access meeting ADA/TAS requirements
- ✓ Specifications necessary for construction
- ✓ Responses to questions required for bidding and review of bids one (1) time.
- ✓ Construction administration consisting of responses to RFI's, submittal reviews, reviews of applications for payment, reviews of changes, and final walk-through to complete punchlist. Engineering time spent on construction administration in excess of hours above will be invoiced as additional services.
- ✓ Up to two (2) site visits. Additional site visits will be invoiced as additional services at a rate of \$800 per site visit

EXCLUDED

CIVIL ENGINEERING

- × Topographic or boundary surveying
- × Existing utility location
- × Geotechnical recommendations
- × FEMA Floodplain modeling and mitigation of the site due to flood hazard conditions
- × Mechanical, electrical, or plumbing design and extension of public water, sanitary sewer, and/or storm to the site to service the development
- × Utility loads or demands
- × Franchise utility design
- × ADA/TAS compliance review and additional permitting (e.g. TxDOT, Army Corp of Engineers, TCEQ, EPA)
- × Platting, re-platting
- × Zoning, re-zoning
- × Architectural site layout
- × Traffic impact analysis
- × Landscape architectural design or irrigation design
- × Services during construction other than described within this proposal



PROJECT SCOPE

INCLUDED	EXCLUDED
<p>SURVEY</p> <ul style="list-style-type: none">✓ Contacting Texas 811 for public utility locates✓ Mobilization to the site✓ Establishing a control network, with horizontal and vertical positions on all major control points✓ Location of existing streets, sidewalks, parking areas, buildings, and other surface features✓ Tree inventory survey✓ Identifying utilities (water, sanitary sewer, storm sewer, electric services, communication services) as marked by their respective owners✓ Invert measurements of existing storm and sanitary sewer manholes and inlets✓ Creation of a topographic surface with observations at a minimum of 50 foot intervals to be shown with 1 foot contours✓ A signed, sealed, dated drawing depicting the results of the survey showing elevations or relief by contours or grid plotted elevations, with relevant features or improvements on the site✓ Deliverable package containing signed, sealed and dated PDF, .ascii, .auf, survey .dwg, contours .dwg and surface .dwg files via email or drop box✓ Location of specific boundary monumentation to adequately determine property/boundary lines✓ Title report to supplement research in order to facilitate identification of any encumbrances, protrusions, potential encroachments, etc.	<p>SURVEY</p> <ul style="list-style-type: none">× Title commitment× As-built survey× Platting× Any boundary beyond the first boundary× Filing/recording of legal documents× Revisions to final survey× Marking of utilities× Construction staking× File conversion to older software (Gessner Engineering will provide .dwg files in current AutoDesk format)



FEE BREAKDOWN

Listed below is the total fee for each phase of work. If the project is abandoned prior to completion of the design, the fee shall be due the date the project is abandoned and shall be based upon the percentage of services performed. Engineer shall commence performance of the Services upon receipt of the signed proposal.

Geotechnical Engineering	\$4,290
Structural Engineering	\$2,820
Design Development	\$980
Construction Documents	\$1,280
Construction Administration*	\$560
Civil Engineering	\$31,200
Schematic Design	\$4,680
Design Development	\$7,800
Construction Documents	\$12,480
Bidding and Negotiation	\$1,560
Construction Administration	\$4,680
Topographic Survey	\$7,500

*Our budget for this phase is based on an anticipated amount of interaction; however, some projects or contractors may require increased involvement. Our time in this phase is limited by the budget and may not necessarily include all of the planned activities. We can provide additional services if required beyond the budget, as defined in this agreement.

BILLING & PAYMENT TERMS

Invoicing will take place monthly or at completion/imminent completion of a phase/project. Monthly billing may include partial billing of a particular phase, as determined by review of the percent complete for that phase/project.

Should the scope of the project change after the design development phase, additional services will be charged based on the time required for revisions at the current hourly rates. Total fee amount will be invoiced and is for the complete services to be provided per the above fee. Gessner Engineering, LLC reserves the right to internally reallocate fee amounts to the various project phases, as necessary, based on the necessary time to complete the work.

Additional services may be provided on request or per the terms of this agreement and shall be billed at the current hourly rates in force (available upon request).



TERMS AND CONDITIONS

I. DEFINITION OF TERMS

- A. Agreement – The Agreement Letter, these Terms and Conditions, and any other attachments will be referred collectively as the “Agreement” between the Client and the Engineer.
- B. Agreement Letter – The letter which identifies the parties to this Agreement and describes the Project.
- C. Client – The person or entity named as Client in the Agreement Letter.
- D. Contract Documents – The drawings, specifications, addenda, and change orders that define the Project.
- E. Engineer – Gessner Engineering, LLC.
- F. Hazardous Materials – Any substances, including but not limited to asbestos; toxic materials; toxic or hazardous waste; PCBs; pollutants including any solid, liquid, gaseous, thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals, and waste; mold, mildew, or other microbial growth; combustible gases and materials; petroleum or radioactive materials (as each of these is defined in applicable federal statutes); or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.
- G. Owner – The person or entity, if any, named as the Owner in the Agreement Letter. If no Owner is named, the Client is the Owner.
- H. Project – The completed installation defined by the Contract Documents including the design, all as described in the Agreement Letter.
- I. Services – Those engineering services provided by the Engineer in connection with the Project. Such Services consist of both Basic Services and Additional Services as described in the Agreement Letter. It is clearly understood the Engineer is providing professional services only and is not providing any product(s).
- J. Special Consultants – Consultants in specialized fields outside of Engineer’s area of expertise who are retained through the Engineer or directly by the Client or Owner to provide various services such as, but not limited to, testing, surveying, traffic studies, value engineering etc. The use of Special Consultants is subject to the acceptance by the Engineer and to the Client’s written approval.
- K. Work – All work performed in connection with the Project other than Services performed by the Engineer. Work is the portion of the Project that is the responsibility of the contractor.

II. ENGINEER’S RESPONSIBILITIES

- A. Standard of Care – Engineer represents that it will render Services under this Agreement in a professional manner in accordance with generally accepted professional practices using reasonable care and skill consistent with that ordinarily exercised by members of its profession under similar conditions of time and locale. Except as expressly provided for in this Paragraph, Engineer shall not be liable for a breach of the Standard of Care set forth in this Paragraph unless Client gives written notice of the defective Services, reasonably described, to Engineer within fourteen (14) business days of the time when Client (or Client’s contractors or subcontractors) discovers or should have discovered that the Services were in breach of the Standard of Care, but in no event shall notice be given more than one year after the completion of services. If the Engineer received timely notice as herein required, Engineer shall, in its sole discretion, either (i) repair or re-perform such Services (or the defective part), or (ii) credit or refund the price paid to Engineer that is attributable to such defective Services. THE REMEDIES SET FORTH IN THE PRECEDING SENTENCE SHALL BE CLIENT’S SOLE AND EXCLUSIVE REMEDY AND ENGINEER’S ENTIRE LIABILITY FOR ANY BREACH OF THE STANDARD OF CARE SET FORTH IN THIS PARAGRAPH. Failure by the Client to notify the Engineer of such defects shall relieve the Engineer of the costs of remedying such defects above the sum such remedy would have cost had prompt notification been given when such defects were discovered.
- B. Excluded Services – Engineer will not obligate itself to provide any Services which, in the Engineer’s professional opinion, are outside its area of expertise or are in violation of applicable codes or regulations.
- C. Job Site Visits – Engineer will only make site visits as required by the Contract Documents.

III. CLIENT’S RESPONSIBILITIES

- A. Access to Site – Client will furnish or obtain full and free access to all property as necessary for the performance of Engineer’s Services under this Agreement.
- B. Permits and Approvals – Client will furnish permits and approvals from all governmental authorities having jurisdiction over any portion of the Project and from others as may be necessary for completion of the Project.
- C. Design Criteria – Client will timely furnish detailed information, design criteria, drawings, specifications, construction standards, and full information as to Client’s requirements for the Project. Failure to provide such information or documentation when requested may result in the delay of the Project.
- D. Reviews and Authorizations – Client shall receive and examine documents submitted by Engineer, interpret and define Client’s policies and promptly render decisions and authorizations in writing to prevent unreasonable delay in the progress of Engineer’s Services.
- E. Documents and Information - Failure by Client to timely deliver will result in additional charge and timely delivery of project deliverables. The following items are to be provided by the Client for each applicable phase:

ACCOUNTING

- Billing contacts (name, email address, mailing address)
- Invoice instructions
- Approval of invoice format
- Change order format

GEOTECHNICAL ENGINEERING:

- Accessible site
- Location of utilities
- Site plan



TERMS AND CONDITIONS

STRUCTURAL ENGINEERING:

- Architectural backgrounds for our use
- If available, Revit® files or CAD files. If construction documents are hand drawn or digital files are not available, full size to-scale drawings shall be provided
- A geotechnical report, if not to be provided as part of this agreement
- Metal building loads and connection information from proprietary structural systems or systems to be provided by others (applicable for metal buildings only)
- Project title block (if no title block is provided, Gessner Engineering will prepare documents on our title block)
- All non-standard AutoCAD font files in .SHX format
- Final printing and distribution of Specifications and Construction Documents

CIVIL ENGINEERING:

- Digital backgrounds in AutoCAD or REVIT format. If construction documents are hand drawn or digital files are not available, full size to-scale drawings shall be provided
- Project title block (if no title block is provided Gessner Engineering will prepare documents on our title block)
- All non-standard AutoCAD font files .SHX format
- A complete set of construction documents
- Topographical Survey of the site including all topographical information, existing utilities, and other existing improvements in AutoCAD format, if not to be provided as part of this agreement
- Utility load data for proposed water and sanitary sewer needs for the proposed building(s)

FORENSIC INVESTIGATIONS:

- Access to facility
- If available, existing building plans, construction test reports and inspections, previous forensic inspection reports, available repair history, and any other information relevant to the inspection.

SURVEYING SERVICES:

- When applicable, title commitment
- When applicable, CAD file

F. Client's Consultants – It is understood and agreed that the Client may contract directly with other consultants to provide other services for the Project. The Client agrees that Engineer shall have no responsibility or liability for any portion of the Project designed by other consultants engaged by the Client or by Special Consultants retained through the Engineer for the Client's convenience. The Engineer shall not be required to check or verify contract documents or reports provided by such other consultants or Special Consultants and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents or reports with applicable laws, codes, statutes, ordinances and regulations.

G. Confidential Information – All non-public, confidential or proprietary information of Engineer, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Engineer to Client, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by Client without the prior written consent of Engineer. Confidential Information does not include information that is (i) in the public domain, (ii) known by Client at the time of disclosure, or (iii) rightfully obtained by Client on a non-confidential basis from a third party. Client agrees to use the Confidential Information only in connection with Engineer's provision of Services. Engineer shall be entitled to injunctive relief for any violation of this Paragraph.

H. Insurance - Represents and warrants that all other consultants and design professionals will be required to have or obtain professional liability and general liability insurance. Client indemnifies and holds the Engineer harmless for failure to do so.

IV. PAYMENTS TO ENGINEER

A. Time of Payment – Payments to the Engineer shall be made within 30 days following receipt of Engineer's invoice. The invoice will be based upon the proportion of the Engineer's Services completed during the invoice period, or upon time spent when fees are on an hourly basis (but shall not be due to the Engineer before and unless payments are received by the Client from the Owner for the portion of the Services completed by the Engineer). The Client shall promptly forward Engineer's invoices to Owner for payment and shall then exert all reasonable and diligent effort to collect prompt payment from the Owner.

B. Late Payment – Client agrees to pay Engineer interest on all amounts past due at a rate of 1.5% per month, subject to maximum legal limits. Any amount paid in excess of maximum legal limits shall be automatically applied to reduce the principal owed by Client. In addition to any amount due and any applicable interest, Client agrees to pay Engineer all reasonable collection and attorney's fees, court costs and other expenses including reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed according to the Engineer's prevailing fee schedule and expense policies. Engineer reserves the right to discontinue all current work if any invoice is not paid within 30 days of receipt. If Client has any invoices more than 60 days past due, all of Client's invoices must be paid in full prior to document submission on the Project.

C. Reimbursable Expenses – Expenses payable on a client's behalf to a third party shall be paid directly to the third party or to the Engineer prior to the Engineer engaging the third party to perform work on behalf of the client.

V. DOCUMENTS

A. Ownership – All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names



TERMS AND CONDITIONS

and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, including, without limitation, drawings, specifications, computer files, electronic media, field data, engineering calculations, notes, and other documents, and instruments prepared or furnished by Engineer to Client pursuant to this Agreement (collectively, the "Deliverables") shall be owned by the Engineer. Engineer shall retain all common law, statutory and other reserved rights, in the Deliverables. Whether or not the Project is completed, but subject to the provisions of this Article, all such Deliverables are instruments of professional service only and Engineer is not providing any product. The Client may retain copies of all Deliverables upon completion of Services and payment in full of all monies due to Engineer. Such Deliverables are not intended or represented to be suitable for reuse on extensions of the Project or on any other project, and Client agrees not to use such Deliverables documents for any other purpose.

B. Unauthorized Changes – The Engineer shall have no liability to the Client or others for changes made to the Engineer's documents or to the Project by the Client without the Engineer's prior written approval.

VI. DISCLAIMER OF WARRANTIES

ENGINEER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (III) WARRANTY OF TITLE; OR (D) WARRANTY PROPOSAL FOR PROFESSIONAL SERVICES - ATTACHMENT B AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

VII. LIABILITY LIMITATION

A. Engineer shall have no responsibility or liability to Client or to others for acts or omissions of the contractor or any other persons (including, without limitation, Client and/or Owner) performing Work on the Project; or for construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions, in connection with the Work; or for contractor's or any other person's (including, without limitation, Client's and/or Owner's) failure to carry out the Work in accordance with drawings and specifications prepared by Engineer; or for acceptance by the Client, its agents, subcontractors, or employees, of materials, equipment and/or workmanship over the objection of Engineer, its agents or employees if such materials, equipment or workmanship in question have been rejected in writing by Engineer, prior to the inclusion of same in the Project, and Client shall notify Engineer in writing before any Work is accepted on behalf of Client or Owner without prior written approval of Engineer so that Engineer may timely object to such acceptance; or for any other reason beyond the warranty of the use of reasonable professional skills in execution of the Services described in Paragraph II(A) above. Furthermore, Engineer shall not be responsible or liable for any defects or omissions in the Project or Work resulting from any deviation from Engineer's Contract Documents or recommendations; for any defects or omissions by any persons or entities responsible for performing any of the Work for any portion of the Project; or for any claims related to increased costs within the contingency resulting from changes described below. IN NO EVENT SHALL ENGINEER BE LIABLE TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE OR FRAUD), STRICT LIABILITY OR STATUTORY LIABILITY OR ANY OTHER CAUSE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ENGINEER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL ENGINEER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE OR FRAUD), STRICT LIABILITY OR STATUTORY LIABILITY OR ANY OTHER CAUSE, EXCEED THE AGGREGATE AMOUNTS PAID TO ENGINEER PURSUANT TO THIS AGREEMENT.

B. No Personal Liability - Client and Engineer agree the representations and undertakings set forth in this Agreements are not made or intended as personal by their respective shareholders, officers, directors, members, managers, employees, and no personal liability is assumed by, nor may at any time be asserted against, any of them personally, all such liability, if any, being expressly waived or released by the Parties. The Parties agree claims, if any, will be brought against the business entities that are the Parties to this Agreement.

C. Safety – Engineer has not been retained or compensated to provide design and construction review services relating to the contractor's safety precautions or to the means, methods, techniques, sequences, or procedures required for the contractor to perform his Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The Client agrees that the general contractor shall be solely responsible for job site safety, and warrants that this intent shall be carried out in the Client's contract with the contractor. The Client also agrees that, as a condition to the Client's contract with the contractor, the Engineer shall be indemnified by the contractor and shall be made an additional insured under the contractor's general liability insurance policies.

VIII. INDEMNIFICATION

The Client and the Owner shall, jointly and severally indemnify and hold harmless Engineer from any and all damages, liabilities, cost and expenses, including reasonable attorney's fees arising out of or connected in any way with any breach by Owner or Client of this Agreement; any services performed by any Special Consultants or any of Client's other consultants; any acts or omissions of any person or entity performing any portion of the Work; any cause of action by any person or entity performing any portion of the Work based on Engineer's good-faith recommendation to reject or accept any portion of such Work; acceptance of any Work which Engineer has recommended in writing be rejected; the detection, presence, handling, removal, abatement or disposal of any Hazardous Materials, which may, at any time, be in, on, about, or adjacent to the Project site WHETHER SUCH LIABILITY RELATED TO THE HAZARDOUS MATERIALS ARISES UNDER BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE OR FRAUD, STRICT LIABILITY OR STATUTORY LIABILITY OR ANY OTHER CAUSE, EXCEPT FOR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ENGINEER. Because remodeling and/or rehabilitation of existing facilities requires the Engineer to make assumptions regarding existing conditions which may not be verifiable



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without the Client or Owner expending substantial sums of money or destroying otherwise adequate or serviceable portions of the facilities, the Client and Owner agree, to indemnify and hold harmless the Engineer against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the Project, excepting only those damages, liabilities or cost attributable to the gross negligence and willful misconduct by the Engineer.

IX. HAZARDOUS MATERIALS

It is understood and agreed that in seeking the Services of the Engineer under this Agreement, the Client is requesting the Engineer to perform the Services for the Client's benefit. Both parties agree that the Engineer has not been retained or compensated to provide any services related to the presence of any Hazardous Materials.

X. TERMINATION

This Agreement may be terminated by either party for any reason by sending written notice to the other party. Such termination shall be effective seven (7) days after notice is received. Within seven (7) days of termination of the Agreement, Engineer will send a statement of account and final invoice to Client for Engineer's Services rendered. Client shall pay Engineer the amount set forth in the final invoice which will be equal to the sum of the following amounts which have not been paid prior to the date of the final invoice: (i) compensation for Basic Services performed for any part of the Project, plus (ii) additional compensation for Additional Services rendered, plus (iii) reimbursement for reimbursable expenses incurred by Engineer, plus (iv) Special Consultant fees incurred by Engineer, plus (v) any outstanding interest in accordance with Paragraph IV(B) hereof.

XI. MISCELLANEOUS PROVISIONS

A. Assignment of Rights – Neither Client nor Engineer shall assign or transfer all or any portion of its interest in this Agreement without the prior written consent of the other. Subject to the preceding sentence, this Agreement shall inure to the benefit of and shall be binding upon the successors, permitted assigns and legal representatives of each party. Subcontracting to Special Consultants normally contemplated by the Engineer shall not be considered an assignment for purposes of this Agreement.

B. Entire Agreement – This Agreement represents the entire and integrated Agreement between Client and Engineer and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Client and Engineer. These Terms and Conditions shall prevail over any of Client's general terms and conditions regardless of whether or when Client has submitted its request for proposal, order, or such terms. Provision of services to Client does not constitute acceptance of any of Client's terms and conditions and does not serve to modify or amend these Terms and Conditions. CLIENT WARRANTS AND ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY LEGAL DUTY, IF ONE EXISTS (CONTRACTUAL, STATUTORY, AT COMMON LAW, FIDUCIARY, ARISING OUT OF THE RELATIONSHIP AMONG AND BETWEEN THE PARTIES, OR OTHERWISE), ON THE PART OF ENGINEER TO DISCLOSE ANY INFORMATION IN CONNECTION WITH FACTS UNDERLYING THE TERMS OF THIS AGREEMENT OR THE EXECUTION OF THIS AGREEMENT; IT BEING EXPRESSLY UNDERSTOOD, ACKNOWLEDGED, AND AGREED BY THE CLIENT THAT IT SHALL NEVER ASSERT ANY FAILURE TO DISCLOSE INFORMATION ON THE PART OF ENGINEER AS A GROUND FOR CHALLENGING THIS AGREEMENT.

C. No Arbitration Required - Notwithstanding any provisions set forth in the Agreement Letter, Contract Documents, or these Terms and Conditions, the parties will not be required to arbitrate disputes arising under the Agreement or in connection with any transactions or Services undertaken pursuant thereto.

D. Waiver – No waiver by either party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by such party. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

E. Betterment – If not due to the Engineer's negligence, a required item or component of the Project is omitted from the Contract documents, the Engineer shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original Contract Documents. In no event will the Engineer be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

F. Interpretation – LIMITATIONS ON LIABILITY, WAIVERS AND INDEMNITIES FOR THIS AGREEMENT ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND SHALL APPLY TO ALL LEGAL THEORIES OR RECOVERY, INCLUDING BREACH OF CONTRACT OR WARRANTY, BREACH OF FIDUCIARY DUTY, TORT (INCLUDING NEGLIGENCE OR FRAUD), STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION, PROVIDED THAT THESE LIMITATIONS ON LIABILITY, WAIVERS AND INDEMNITIES WILL NOT APPLY TO ANY LOSSES OR DAMAGES THAT MAY BE FOUND BY A TRIER OF FACT TO HAVE BEEN CAUSED BY THE ENGINEER'S GROSS NEGLIGENCE OR THE ENGINEER'S WILLFUL MISCONDUCT. The Parties also agree that the Client will not seek damages in excess of the contractually agreed-upon limitations directly or indirectly through suits against other parties who may join the Engineer as a third-party defendant. The term "Parties", for purposes of this Paragraph only, means the Client and the Engineer, and their officers, directors, partners, employees, subcontractors, and Special Consultants.

G. Force Majeure – Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, fires, riots, natural disasters, strikes, lockouts, or other labor disputes (whether or not relating to either party's workforce), accidents, governmental actions, war, invasions or hostilities (whether war is or not), terrorist threats or acts, or other civil unrest, national emergencies, revolutions, insurrections, epidemics, or restraints or delays affecting carriers, telecommunication breakdowns or power outages or any other events beyond the reasonable control of the other party, its employees or agents.

H. Severability – In the event any provision of this Agreement shall be held to be invalid or unenforceable, that provision shall be struck and the remaining provisions shall be valid and binding upon the parties.

I. Relationship of the Parties – The relationship between the parties is that of independent contractors. Nothing contained in this Agreement



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shall be construed as creating any agency, partnership, fiduciary, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

J. Survival – Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties, including all limitations of liability, indemnifications, warranties, disclaimer of warranties, and representations, shall survive such completion or termination and remain in full force and effect until fulfilled.

K. Cost Estimates – Any opinion of the construction cost prepared by Engineer represents its best judgment as a design professional familiar with site, geotechnical and structural work and is supplied for the general guidance of Client. Since Engineer has no control over cost of labor and materials, over competitive bidding, or other market conditions, Engineer makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Engineer's opinion of probable construction cost. Further, the Owner and the Engineer agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the Contract Documents prepared by the Engineer and therefore, that the final construction cost of the Project may exceed the estimated construction cost. The Owner agrees to set aside a reserve in the amount as a contingency to be used, as required, to pay for any such increased costs and changes.

L. Instructions to Contractor – Engineer's instructions to the contractor(s) shall be issued in writing through the Client unless otherwise mutually agreed.

M. Titles – The Paragraph titles used in this Agreement are for general reference only and are not part of the Agreement.

N. Third-Party Beneficiaries – Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Engineer. The Engineer's Services under this Agreement are being performed solely for the Client's benefit, and no party or entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of Services hereunder. The Client and Engineer agree to require a similar provision in all contracts with contractors, subcontractors, Special Consultants, other consultants of the Client vendors and other entities involved in this Project to carry out the intent of this provision.

O. Renegotiation – Lump sum and not-to-exceed Agreements will be subject to renegotiation at the Engineer's discretion if the duration of the Project is more than twenty-four (24) months.

P. Governing Law – The Agreement and all matters arising out of or relating to the Agreement are governed by, and are to be construed in accordance with, the laws of the State of Texas, without regard to the conflict of law provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

Q. No Representation - THE CLIENT FURTHER WARRANTS AND ACKNOWLEDGES IT HAS BEEN GIVEN A REASONABLE PERIOD OF TIME TO CONSIDER THE AGREEMENT AND HAS THOROUGHLY REVIEWED EACH DOCUMENT AND HAS AGREED TO THE TERMS WITH THE ADVICE AND COUNSEL OF ITS ATTORNEY. CLIENT REPRESENTS AND WARRANTS THAT IN EXECUTING THE AGREEMENT IT DID NOT RELY AND HAS NOT RELIED UPON ANY REPRESENTATION OR STATEMENT MADE BY ENGINEER OR ANY OF ITS AGENTS, REPRESENTATIVES, OR ATTORNEYS, WITH REGARD TO (1) THE SUBJECT MATTER OR EFFECT OF THE AGREEMENT, OR (2) ANY OTHER FACTS OR ISSUES WHICH MIGHT BE DEEMED MATERIAL TO ITS DECISION TO ENTER INTO THE AGREEMENT, OTHER THAN AS SPECIFICALLY STATED IN THE AGREEMENT.

[End of Attachment "B"]

