

**PROFESSIONAL SERVICES AGREEMENT
FOR
PFLUGER, GILLELAND AND HERITAGE PARKS AND PFLUGERVILLE
RECREATION CENTER BUILDING IMPROVEMENTS PROJECTS**

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 MWM DesignGroup, Inc. (“Consultant”), both of which may be referred to herein 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.

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

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 26, 2016 and terminate on July 26, 2017.

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 or his designee. The determination made by City Manager and/or his designee 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 and/or his designee. 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

and/or his designee; 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 and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Two Hundred and Seven Thousand Eight Hundred and Sixty Two Dollars (\$207,862) 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 Pflugerville City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. 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: James Hemenes
Parks & Recreation Director
P.O. Box 589
Pflugerville, Texas 78660

If intended for Consultant, to:

MWM DesignGroup, Inc.
Attn: Julia Harrod, P.E.
President
305 E Huntland Dr.
Austin, Texas 78752

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 "*Pfluger, Gilleland and Heritage Parks and Pflugerville Recreation Center Building Improvements Projects*" 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

Bidder/Proposer 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. Bidder/Proposer 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 General (Public) Liability to include coverage for: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate 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. We 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 Majure - 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: Briley MEP, LLC and LEAP!Structures, PLLC. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, 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 Council.

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 venturers 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 has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

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 subject to approval by the City Council, as evidenced by passage of an ordinance.

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 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Pflugerville, 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 interpreted in the order of priority as appears below:

Attachment "A" 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.

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

**CITY OF
PFLUGERVILLE**

CONSULTANT
MWM DesignGroup, Inc.



(Signature)

(Signature)

Printed Name: Brandon E. Wade

Printed Name: Brian Lee Wells, PE

Title: City Manager

Title: Design Operations
Manager

Date: _____

Date: July 15, 2016



www.mwmdesigngroup.com
TBAE Firm Registration No.: 1452
TBPE Firm Registration No.: F-1416
TBPLS Firm Registration No.: 10065600

Date: 17 June 2016 **revised 1 July 2016**
Subject: Professional Services Agreement
Project: Pfluger, Gilleland and Heritage Parks and Pflugerville Recreation Center Building Improvements Projects
Owner: City of Pflugerville PARD
Contact: James Hemenes
Address: 400 Immanuel Rd
Pflugerville, TX 78660

The City of Pflugerville Parks and Recreation Department has requested a proposal for professional design services pertinent to four separate subprojects, enumerated as follows, from MWM DesignGroup (A/E):

1. Design of a new restroom building to replace the existing restroom building in Pfluger Park (Pfluger Park)
2. Design of a new shower and locker room building to replace the existing shower and locker room building, and design of a new clubhouse to replace the existing pool house, in Gilleland Creek Park (Gilleland Creek Park)
3. Design for the renovation and adaptive reuse of the Bohls House in Heritage Park to provide new offices for the Parks and Recreation Departments (Heritage Park)
4. Redesign of the former Parks and Recreation Department offices in the Pflugerville Recreation Center (Recreation Center)

This proposal addresses the professional services (architecture, civil engineering, landscape architecture and jurisdictional services to be provided by MWM DesignGroup; electrical, mechanical and plumbing engineering services to be provided by Briley MEP Engineering, LLC as a subconsultant to A/E; and structural engineering to be provided by LEAP!Structures, PLLC as a subconsultant to A/E) pertinent to the design, permitting, bidding and construction administration of each of the four subprojects. Given the locations of the four subprojects on separate sites, it is presumed that each subproject shall be competitively bid as a separate construction project.

OUTLINE OF PROFESSIONAL SERVICES

Each of the four subprojects shall include, as applicable, the following professional services. Services for each subproject are more specifically described under SUMMARY OF SUBPROJECT-SPECIFIC PROFESSIONAL SERVICES, following this section.

As applicable, professional services shall be provided in accordance with the Architectural Design Program Narrative (ADPN) issued by A/E on 23 January 2015.

BUILDING DESIGN

A/E shall prepare, for the review and approval of Owner, plan, section and elevation drawings of the proposed building improvements, including a descriptive summary of building mechanical, electrical,



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plumbing and structural improvements, in accordance with the ADPN to constitute 50% Construction Documents.

Based on the approved 50% Construction Documents, and any adjustments in the scope or quality of the project, A/E shall prepare 100% Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction and permitting of the project, including structural and mechanical, electrical, and plumbing systems, in compliance with applicable codes and ordinances. The 100% Construction Documents will be signed/sealed by licensed professionals and issued for regulatory review, and for bidding and construction of the project.

SITE CIVIL DESIGN

A/E shall prepare, for the review and approval of Owner, preliminary plan drawings of civil improvements associated with the proposed scope of work. Based on the approved preliminary documents, A/E shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction and permitting of the project in compliance with applicable codes and ordinances. The Construction Documents will be signed/sealed by licensed professionals and used for regulatory review. Permitted construction plans are considered to be the Bid Set.

DESIGN DELIVERABLES

1. 50% Construction Documents: Drawings, Specifications, Opinion of Cost
2. 100% Construction Documents: Signed and Sealed Drawings, Specifications, Final Opinion of Cost

PERMITTING

Site Development and Building permitting services will begin after Owner approval of the Construction Documents. A/E will work with the City of Pflugerville seek approval of the proposed building and site improvements. Permit fees are not within the scope of this proposal.

A/E shall compile a submittal package of architectural documents for Texas Accessibility Standards review, and shall provide them to a Registered Accessibility Specialist for review. Upon receipt of review comments, A/E will address any concerns noted and provide a written response for resubmittal. Registration, review, and inspection fees are not within the scope of this proposal.

BID AND CONSTRUCTION PHASE SERVICES

In support of the competitive-bid contracting and construction phases of the project, A/E shall provide the following services:

1. Prepare and compile a Project Manual containing technical specifications and other design documents prepared by A/E and front-end specifications (general and supplemental conditions



- of the contract for construction, bonding and insurance requirements, and other legal and administrative requirements prepared by the Owner.
2. Attend a pre-bid meeting with prospective contractors. Consider requests for substitutions, where appropriate, and provide to Owner documentation for inclusion in addenda.
 3. Assist Owner in bid validation or proposal evaluation.
 4. Following the execution of the construction contract, make periodic visits to the site at intervals appropriate to the contractors operations in order to keep the Owner informed of the progress and quality of the work completed and to determine in general that the work is being completed in accordance with the contract documents. This proposal was prepared on the assumption that A/E would be making not more than eight visits to the project site in total, which total includes the preconstruction conference and walkthrough upon the completion of the work.
 5. Review and respond to properly prepared, timely requests from the contractor for additional information concerning the contract documents.
 6. Review shop drawings, submittals and pay applications provided by the contractor, and maintain a record of all such communication in accordance with the requirements of the contract documents.
 7. Assist the Owner in completing the closeout documentation necessary to conclude the construction phase of the project.
 8. As-Builts will be prepared by the construction Contractor. A/E shall use As-Builts to prepare Record Drawings.

ASSUMPTIONS

1. Deliverables will consist of submittals (for Owner review and approval) of 50% Construction Documents: Drawings, Specifications, Opinion of Cost; and 100% Construction Documents: Signed and Sealed Drawings, Specifications, Final Opinion of Cost.
2. Foundation design for new buildings in Pfluger and Gilleland Creek Parks will require a current geotechnical investigation documenting soil conditions existing at each site. Acquisition of geotechnical studies is not included in this proposal as a basic service.
3. Site improvements supplemental to those included as basic services under this proposal, including site accessibility improvements, parking lot expansions, utility improvements, drainage improvements and environmental enhancements (potentially including stormwater management and water-quality infrastructure improvements) may require professional services not presently included in this proposal, such as surveying, additional geotechnical investigations, SUE services, etc. Accordingly it is the recommendation of the A/E that a Preliminary Engineering Report (PER) be completed prior to authorizing such additional site improvements in order to establish a definitive scope of work, budget, and scope of professional services.
4. Owner will prepare hazardous materials assessment of the existing buildings prior to the commencement of design, and shall undertake any remediation necessitated by this assessment, or by the proposed scope of renovations. Services pertaining to the investigation or remediation of hazardous materials are NOT included in this proposal.
5. No on-site stormwater detention or water quality controls will be required by the proposed improvements.
6. Owner will provide A/E with record documentation of existing utility infrastructure within each of the subproject sites.



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7. Agency fees, including permit and review fees, inspection fees, project registration fees, and similar jurisdictional fees whether due directly to an agency having jurisdiction over the subprojects or to a third-party acting on behalf of such an agency (as with respect to a Registered Accessibility Specialist acting for the Texas Department of Licensing and Regulation) are not included within the scope of this proposal. Negotiation for reduction of fees or waivers from fees is not included in this proposal.
8. The proposal presumes a single development phase and, single bid package without bid alternates for each subproject.
9. Preparing and processing applications for waivers and/or variances are not included as basic services.
10. Preparing legal documents (i.e. license agreements, restrictive covenants, easements) are excluded from this scope of services.

SUMMARY OF SUBPROJECT-SPECIFIC PROFESSIONAL SERVICES

1. PFLUGER PARK

BUILDING DESIGN

Subproject shall include the demolition and replacement of the existing Pfluger Park restroom. In order to preserve the functional efficiencies of the existing park layout, the new restroom building will be planned in approximately the same location as the existing building, and will utilize the existing utility services. Given these constraints the new restroom building will be located within the 1% floodplain of Gilleland Creek and shall be designed, structurally, to resist flood loadings and shall incorporate details and materials selected to minimize damage resulting from inundation.

SITE CIVIL DESIGN

The new restroom building will be sited and configured to ensure no adverse impacts to the existing floodplain, relative to conditions presently existing.

Civil improvements will be limited to the immediate vicinity of the new restroom and shall include minor site grading and restoration and flatwork improvements necessary to accommodate an accessible connection between the new restroom and existing pedestrian infrastructure within the park.

2. GILLELAND CREEK PARK

BUILDING DESIGN

Subproject shall include the demolition and replacement of the existing Gilleland Creek Park locker room and pool house. In order to preserve the functional efficiencies of the existing pool layout, the new locker room and clubhouse buildings will be planned in approximately the same location as the existing buildings, and will utilize the existing utility services. Given these constraints both buildings will be located within the 1% floodplain of Gilleland Creek. Programmatically the locker room



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building should be designed at approximately the same elevation as the existing pool deck, and will be planned to resist flood loadings and to incorporate details and materials selected to minimize damage resulting from inundation. The clubhouse shall be designed with a finish floor raised as far as practicable above the 1% flood elevation given the need to accommodate ramped transitions between the existing grades and the raised finish floor. Elements of the clubhouse beneath the 1% elevation shall be designed to be inundated, with elements above the code-mandated freeboard to be conventional frame construction.

SITE CIVIL DESIGN

The new restroom building will be sited and configured to ensure no adverse impacts to the existing floodplain, relative to conditions presently existing.

Civil improvements will be limited to the immediate vicinity of the new restroom and shall include minor site grading and restoration and flatwork improvements necessary to provide connections between the existing pool deck and the new clubhouse and locker buildings. Modifications to the pool deck, or to the pool plumbing and equipment, are not included in the scope of civil improvements.

3. HERITAGE PARK

BUILDING DESIGN

Improvements shall be designed so as to preserve, to the extent feasible, the historic character of the Bohls House while bringing the building into compliance with current code and functional requirements. A/E shall review with Owner alternative solutions for proposed renovations, specifically in the context of retrofitting contemporary mechanical and electrical systems in the existing structure.

SITE CIVIL DESIGN

A/E shall prepare, for the review and approval of Owner, preliminary plan drawings of the proposed site improvements, consisting of the paving of the existing caliche parking lot serving the Bohls House, the construction of pedestrian walkways and ramps, the connection of the Bohls House to existing utility systems on-site, and the installation of landscape and other site improvements required by City code. Based on the approved preliminary documents, A/E shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction and permitting of the project in compliance with applicable codes and ordinances. Construction Documents shall include the preparation of traffic control plans in support of the construction of a new concrete driveway approach with the ROW of the Old Austin Hutto Road. The Construction Documents will be signed/sealed by licensed professionals and used for regulatory review. Permitted construction plans are considered to be the Bid Set.

Civil design services will be provided in accordance with plans of the existing site to be provided to A/E by Owner.



4. RECREATION CENTER

BUILDING DESIGN

Building improvements shall include the renovation and reconfiguration of the existing Nursery and Seniors rooms on the ground floor of the Recreation Center (Rooms 101, 102, 103, 104 and 105) and the renovation and reconfiguration of the existing PARD offices on the second floor (Rooms 204, 207, 208, 210, 211, 212, 214, and 215). Renovations may include the relocation, removal, or addition of new partitions, the addition, replacement, or relocation of plumbing fixtures, the replacement of lighting fixtures, the replacement of finish materials, and the reconfiguration of mechanical ductwork but not the replacement or addition of primary mechanical infrastructure (condensers or air handlers).

SITE CIVIL DESIGN

No civil improvements are proposed in conjunction with the interior remodel project for the Recreation Center

SCHEDULE OF COMPENSATION

	Subproject 1 Pfluger Park	Subproject 2 Gilleland Creek Park	Subproject 3 Heritage Park	Subproject 4 Recreation Center	TOTALS
MWM DesignGroup					
Architecture Design Development	\$ 6,500.00	\$ 15,000.00	\$ 7,500.00	\$ 2,000.00	\$ 31,000.00
Architecture Construction Documents	\$ 9,500.00	\$ 30,000.00	\$ 13,500.00	\$ 6,000.00	\$ 59,000.00
Civil Engineering Design Development	\$ 1,000.00	\$ 2,000.00	\$ 30,322.00	\$ -	\$ 33,322.00
Civil Engineering Design Development	\$ 1,500.00	\$ 3,000.00	\$ 1,500.00	\$ -	\$ 6,000.00
Permitting	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 1,000.00	\$ 8,500.00
Bid and Construction Administration	\$ 3,500.00	\$ 7,000.00	\$ 3,500.00	\$ 2,000.00	\$ 16,000.00
LEAP!					
Structural Engineering Design Development	\$ 1,000.00	\$ 3,600.00	\$ 2,400.00		\$ 7,000.00
Structural Engineering Construction Documents	\$ 1,500.00	\$ 4,700.00	\$ 5,000.00		\$ 11,200.00
Structural Engineering Construction Administration	\$ 500.00	\$ 1,700.00	\$ 1,800.00		\$ 4,000.00
Briley MEP Engineering					
MEP Engineering Design	\$ 3,900.00	\$ 9,880.00	\$ 9,680.00	\$ 2,940.00	\$ 26,400.00
MEP Engineering Construction Administration	\$ 960.00	\$ 1,920.00	\$ 1,920.00	\$ 640.00	\$ 5,440.00
TOTALS	\$ 32,360.00	\$ 81,300.00	\$ 79,622.00	\$ 14,580.00	\$ 207,862.00

Plus reimbursable expenses (as requested by Owner) as described below.



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REIMBURSABLE EXPENSES

Reimbursable expenses are defined as follows and shall be invoiced at direct cost (invoice) plus 5% for overhead.

1. Reproduction of documents for purposes other than in-house use by Owner or the team.
2. Expedited shipping and mailing expenses.
3. Special messenger delivery, if requested by the Owner.

ADDITIONAL SERVICES

Any and all additional services will require written consent by both parties and will be billed at the following rates. These rates are valid for a period of one calendar year from the date of execution. Should the project duration exceed one calendar year, these rates may be subject to renegotiation.

Labor Categories	Total Billable Rate
Principal	\$ 191.00
Licensed Professional/PM IV	\$ 191.00
Licensed Professional/PM III / Sr. Project Manager	\$ 181.53
Licensed Professional/PM II / Sr. Project Manager	\$ 153.12
Licensed Professional/PM I / Project Manager	\$ 120.75
Engineering/Arch Support Staff II	\$ 110.49
Engineering/Arch Support Staff I	\$ 82.00
Sr. Technician / CAD Manager	\$ 101.05
Technician	\$ 92.09
Clerical	\$ 60.74
2 Person Field Crew	\$ 145.00
3 Person Field Crew	\$ 175.00

No additional services work shall be performed by A/E without the express written authorization of Owner.

EXCLUDED SERVICES

Services that are not provided for in this Agreement specifically include, but are not limited to: acquiring certificates or abstracts of title; surveying services; geotechnical analyses; hazardous site assessments; environmental impact assessments; land acquisition services; easement acquisition or vacation; bore hole staking or locating; and design services other than as are specifically enumerated above. Such services may be performed as Additional Services to this Agreement, if authorized by Client.



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RESPONSIBILITY OF OTHERS

In accordance with accepted professional practice it is the responsibility of Owner to provide the design team with complete and accurate information concerning known existing physical and legal conditions of the site that are beyond the scope of the professional engineering services described in this document. Certain unusual or unforeseeable subsurface conditions not identifiable by surface topographic survey may materially alter the scope of the project in a manner not provided for in this contract. Likewise active or pending legal disputes involving property Ownership, rights-of-way, environmental status, easement rights, governmental or departmental jurisdiction or similar matters may complicate the project in a manner that could not reasonably be anticipated at this time. Any change to the scope of the project required by such conditions as are listed above, or any duplication of services necessitated thereby, may be considered grounds for contract modification or an additional services Agreement.

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, telephone (512) 458-1363, has jurisdiction over individuals licensed under the Architectural Registration Law, Texas Civil Statutes, Article 249a.

Approved:

A handwritten signature in blue ink, appearing to read 'W.O. [unclear]', is written over a horizontal line.

MWM DesignGroup, Inc.

1 July 2016

Date

 Owner

 Date