

**PROFESSIONAL SERVICES  
AGREEMENT FOR  
GILLELAND CREEK PARK  
PLAYGROUND**

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 Studio 16:19, LLC (“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 their 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 AND PROJECT SCHEDULE**

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule through executed “Work Authorizations” in exchange for the compensation described in Article IV. A sample form of a Work Authorization is attached hereto in **Exhibit A**. Scope of Services and Project Schedule are detailed in **Exhibit B** 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 enter into Work Authorizations for delivery of services described in the Scope of Services. City agrees to pay Consultant an amount not to exceed Ninety-Eight Thousand Six Hundred and Eighty Dollars (\$98,680.00) as total compensation, according to the Fee Schedule/Consultant Compensation attached hereto as **Exhibit D**. All work performed under a Work Authorization shall be in accordance with the terms of this agreement.

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. Payment to Consultant for expenses not set forth in section 4.1 above, require prior approval and agreement of all parties. 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: Shane Mize  
Director of Parks and  
Recreation  
P.O. Box 589  
Pflugerville, Texas 78660

If intended for Consultant, to:            STUDIO 16:19, LLC  
Attn: Brent A. Baker  
Managing Principal + Founder  
305 W. Liberty Ave., Ste. 100  
Round Rock, Texas 78664

### **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 "Professional Services Agreement Gilleland Creek Park Playground" 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:

**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.

<b>Type of Insurance</b>	<b>Amount of Insurance</b>	<b>Provisions</b>
Commercial (Public) Liability to include coverage for: General 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+VI 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,  
Parks and Recreation  
Department  
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: 4Ward Land Surveying for Surveying; Hallf Engineers for Civil Engineering, and Contour Collective for Accessibility Consultant. 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 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 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:

Exhibits “A”, “B”, “C”, “D” – Work Authorization template; Scope of Services, including Proposed Project Schedule; Proposed Project Site and Site Plan; Consultant Compensation.

The terms and conditions of this Agreement will control to the extent of any conflict to any terms and conditions contained therein.

**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; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Company hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Company hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section

809.001, as amended. Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Company 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 Organizations.

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

**CITY OF  
PFLUGERVILLE**

**CONSULTANT**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

Printed Name: Sereniah Breland

Printed Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

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*(Signature)*

Charles E. Zech

City Attorney

DENTON NAVARRO RODRIGUEZ BERNAL SANTEE & ZECH, P.C.



**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT  
GILLELAND CREEK PARK PLAYGROUND**

**WORK AUTHORIZATION NO. 2024-01**

This WORK AUTHORIZATION is made pursuant to the terms and conditions of the Professional Services Agreement executed the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the City of Pflugerville and STUDIO 16:19, LLC hereinafter referred to as the Agreement.

The Consultant will perform the professional services as shown in Exhibit B, Scope of Services, which will include the tasks to be performed, the deliverables to be provided by the Consultant, and the milestone schedule for completing the tasks and the deliverables.

Compensation to the Consultant for the services provided pursuant to this work authorization shall be in accordance with Article 4 of the Professional Services Agreement, as further detailed in Attachment B to this Work Authorization. Exhibit D shall include the method and basis for determining the compensation for this work authorization. The maximum amount payable under this Work Authorization is \$ \_\_\_\_\_, unless amended by a Supplemental Work Authorization.

This Work Authorization does not waive any of the parties' responsibilities and obligations provided under the Master Services Agreement.

This Work Authorization is hereby accepted, acknowledged, and is effective when fully executed below.

CITY OF PFLUGERVILLE

CONSULTANT – Studio16:19, LLC

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Department of Parks & Recreation

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
City Manager

DATE: \_\_\_\_\_

## EXHIBIT B

### SCOPE OF SERVICES

section a.2.1 :: project overview and understanding

- Gilleland Creek Park is an approximately 8-acre park located at 700 N Railroad Ave., Pflugerville, TX.
- The Project is within City of Pflugerville full-purpose jurisdiction and all plans shall comply with the corresponding Development Codes.
- Coordination of landscape architecture documentation with architectural and engineering site plans for review and approvals by the jurisdictional authorities will be integral to the design process.
- The Project will include renovation of existing park and playground areas with replacing three existing playground structures (including surfacing), adding one new playground area (including surfacing), pedestrian sidewalk connections, and two new shade structures.
- Consultant will provide routine (virtual) attendance at weekly/biweekly design team coordination meetings, as scheduled by the Owner/Development Coordinator. Eight (8) in-person meetings are included in basic services.
- Proposed Sub-Consultants to be retained by the Consultant for the Project to complete and deliver the proposed Scope of Work include:
  - Surveying – 4Ward Land Surveying
  - Civil Engineering – Half Engineers
  - Accessibility Consultant – Contour Collective

section a.2.2 :: basic services

- 011 – Project Management
  - The Consultant will manage the Project design team activities associated with the Project and secure resources necessary to produce the Project deliverables and meet the Project schedule.
  - All communications associated with the Project will be directly channeled through the Consultant Project Manager (PM) for distribution to the Project team as appropriate. The Consultant's PM will be responsible throughout the Project for project coordination and communications, with the Client's PM.
- 015 – Due Diligence
  - Validation of program elements provided by the Client, general site-specific code research and validation for the Project, and development of a concept site plan layout sketches through iterative process with the Client.
- 050– Schematic Design – schematic design development drawings to include:
  - Schematic Design Development – a hardscape and landscape site planning concept will be explored based on proposed program and site conditions for the overall project scope limits and for the proposed amenities. Develop imagery boards of proposed plant palate and hardscape materials for the project (scope includes 30% Schematic Package for the

- development of an overall construction budget).
- 070 – Construction Documents (90/100% construction plans/specification documentation)
  - Landscape Planting Plan(s) – documenting plant names (common and botanical), location, size, quantity, general appearance/ overall condition, planting details, notes, and plan specifications.
  - Hardscape Design Plan(s) – construction details for all hardscape elements pertaining to common amenity areas; to be in accordance with State and Federal accessibility requirements.
  - Irrigation Design Plan(s) – detailed design plans documenting areas to be irrigated, point of connection, controller location, sleeving locations, incorporation of specific zones, hydraulic calculations, mainlines, and detailed head layout for turf areas, dripline layout for all landscape planting beds including irrigation details and specifications, and irrigation calculations.
  - Provide one (1) revision/refinement to Construction Document drawings.
- 080 – Agency Review – coordination with municipal agency staff to resolve questions or comments that arise during the site development review process and tree mitigation discussions after submission
  - Includes a total of two (2) rounds of submittals/comment responses for agency permitting. Agencies having jurisdiction to be included in anticipated review process may include but are not limited to the City, County, WCID, Franchise Utilities, State and other regulatory agencies.
- 100 – Construction Phase – coordination and oversight on scope items as requested by Client, Owner, or Contractor that could include but not be limited to RFI responses and coordination, shop drawing reviews, periodic meetings, or coordination with contractor on various issues that arise during the installation process as well as providing periodic checkins to verify that the approved site development plans are being carried out per plans, notes, details, and specifications.
- 108 – Project Close-Out
  - Punch List development for landscape, hardscape, and 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 from the Contractor for landscape, hardscape, and irrigation scope to codify record set of drawings during the project close-out process.

#### Sub-Consultant Team

- 301 – Surveying – Survey services, as required, to be provided by 4 Ward Land Surveying as a sub-consultant to the Consultant. The project Surveyor’s scope of service shall include:
  - Prepare an on the ground Topographic and Tree Survey for the site.
  - Obtain the location of improvements, utilities, boundary, trees and topographical information on the property. The topographic survey will include the topography needed (one foot contour intervals and grade breaks) to provide sufficient information for the contouring of the site.
  - The tree survey will comprise a list limited to hardwood trees 8” and larger on the site with a tag number, tree diameter, species (common name) and location.
- 303 – Civil Engineering – Civil Engineering services, as required for floodplain analysis, to be provided by Half Engineers as a sub-consultant to the Consultant. The project Civil Engineer’s

scope of service shall include:

- Data Collection and Basemap Preparation
- Pre-Project Hydraulic Analysis
- Proposed Project Hydraulic Analysis
- Prepare Flood Study and CLOMR
- Pre- and Post-Project Drainage area maps
- 307 – Accessibility Consultant – Registered Accessibility Specialist services to be provided by Contour Collective as a subconsultant to the Consultant. The project RAS scope shall include:
  - Register the Project with Texas Department of Licensing and Registration (TDLR)
  - Perform plan review of design drawings and provide detailed report of findings to client
  - Within 30 days of project completion, upon written request, perform inspection and issue a detailed report of findings within 10 days of inspection.
  - Provide letter of corrective modifications.

section a.3 :: supplemental services

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 below. A Supplemental Fee will be agreed upon prior to commencing the task or 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 any task beyond that listed in Basic Services.
- Design Phase – routine attendance at weekly/biweekly design team coordination meetings.
- Construction Phase – routine attendance at weekly/biweekly construction coordination 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 total submittals/comment responses for Permitting as denoted in Basic Services.
- Meetings/Site Visits – more than total physical project meetings/site visits as denoted in Basic Services.
- Value Engineering Phase including redesign of approved plans due to project cost control.
- Signage Design – development of project signage including signage design, dimensional control of proposed signage and coordination with sign contractor for constructability and construction administration.
- LEED Compliance Certification process or SITES Compliance related design services.
- License Agreement – any drafting of legal documentation for the purposes of a license agreement regarding proposed landscape, hardscape, and irrigation within the City or County ROW.
- Exterior Furnishing, Fixtures, and Equipment (FF&E) Selection.
- Rainwater Catchment Design – coordination and selection of rainwater collection system, pump systems and enclosures.

section d.2 :: schedule

The Consultant is prepared to provide the Professional Services in the most expedient and efficient manner possible – with adequate resources and personnel – to complete the work by the times specified.

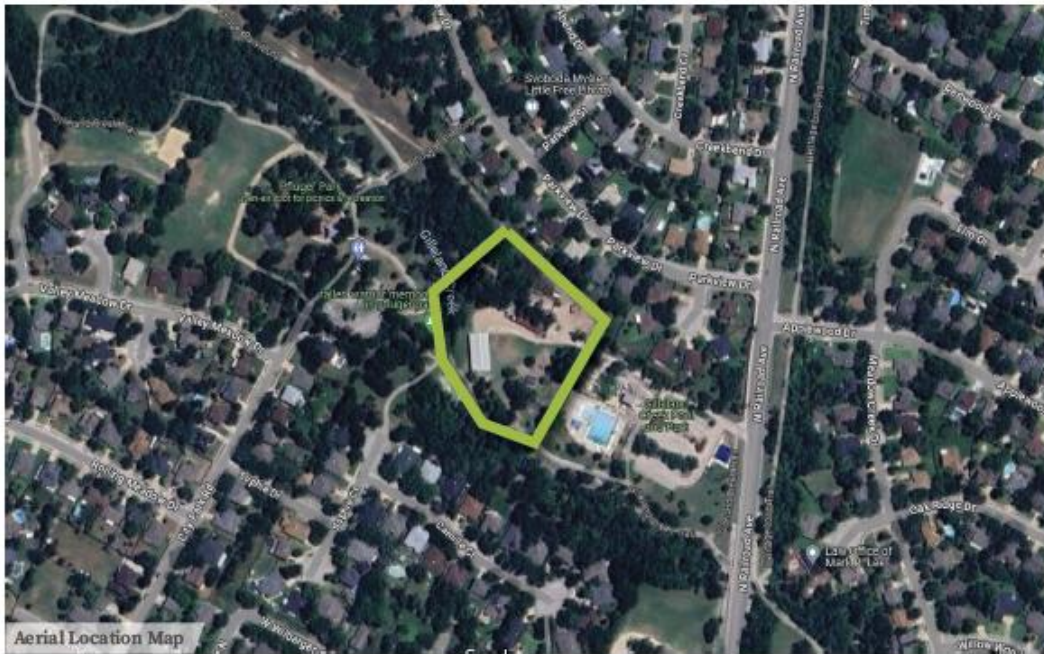
Upon execution of this Proposal/Agreement, Consultant shall prepare a project schedule with the input of the Client to ensure all project deliverables are produced in a timely manner and Project completion is in line with Client preferences. This schedule will not only reflect a commitment to meeting project milestones but will also prioritize the owner's vision and requirements throughout the duration of the Project.

The Consultant may request, in writing, an extension of the Agreement time due to delays beyond their control. In the event that a deadline provided in this Agreement is not met by the Consultant, the Consultant shall provide the Client with a written narrative setting forth in a reasonable degree of detail a plan of recovery to overcome or mitigate the delay.

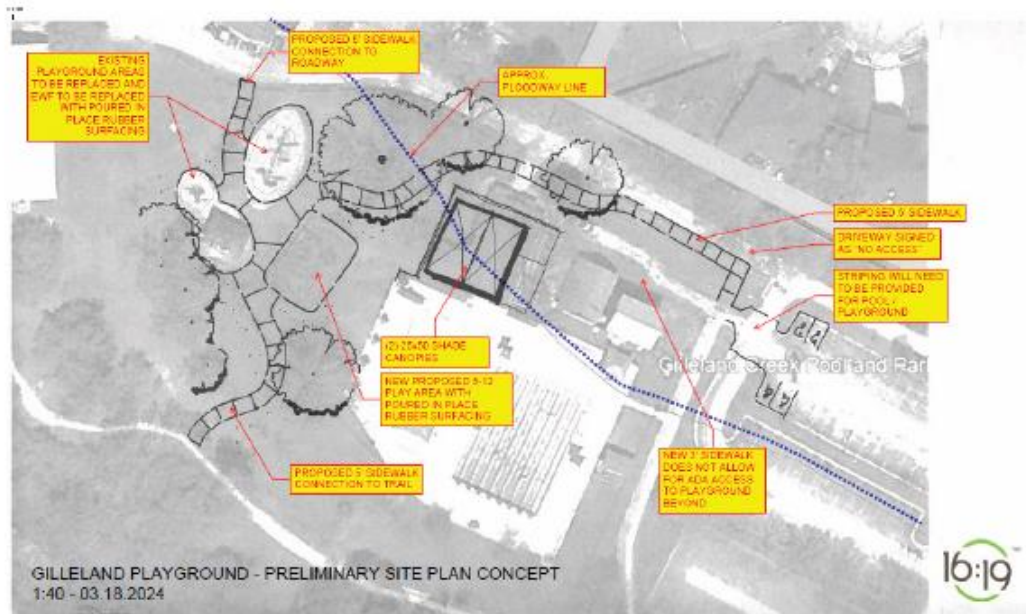
EXHIBIT C

PROPOSED PROJECT SITE AND SITE PLAN

Gilleland Creek Park Playground – Pflugerville, TX



Aerial Location Map



Proposed Site Plan Dated 03/18/2024

## **EXHIBIT D**

### **CONSULTANT COMPENSATION**

section c :: consultant compensation

#### C.1 Compensation

Compensation for the Consultant Services performed under this Agreement shall be paid according to the following, plus Reimbursable Expenses as defined below:

#### C.2 Reimbursable Expenses

Reimbursable Expenses are expenditures made by the Consultant, its employees, and sub-consultants in the interest of the Project, and are to be included in the lump sum fees as noted in Section c.1. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of contracting, and other, similar, direct Project-related expenditures.

#### C.3 Payments

Monthly payments to the Consultant shall be based on (1) the percentage of the Scope of Services completed and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.

Payments are due and payable 30 days from the date of the Consultant's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and at the Consultant's discretion may accrue 1.5% simple interest per month. At the Consultant's option, overdue payments may be grounds for termination or suspension of services.

#### C.4 Supplemental Services

Supplemental Services as described in section a.3 and section a.4, above and shall entitle the Consultant to additional compensation to be determined on an hourly basis as described in section C.5, below or on the basis of a negotiated fee.

The Scope of Services to be provided under this Agreement has been estimated to be completed within the schedule identified in section a.2, above. In the event the project timeline is extended, compensation for services rendered after that time period shall be equitably adjusted.

#### C.5 2024 Hourly Rate Schedule Standard Due Diligence

Managing Principal – Planner/Landscape Architect: \$ 215.00/hr. \$ 175.00/hr.

Principal – Planner/Landscape Architect: \$ 175.00/hr. \$ 115.00/hr.

Associate Principal – Planner/Landscape Architect: \$ 155.00/hr. \$ 95.00/hr.

Director – Planner/Landscape Architect: \$ 135.00/hr. \$ 95.00/hr.

Senior Associate – Planner/Landscape Architect: \$ 115.00/hr. \$ 85.00/hr.

Associate – Planner/Landscape Designer: \$ 95.00/hr. \$ 60.00/hr.

Administrative \$ 85.00/hr. \$ 60.00/hr.



section c.1 :: consultant compensation

Compensation for the Consultant Services performed under this Agreement shall be paid according to the following, plus Reimbursable Expenses as defined in section C.2 above:

Basic Services \*

- 011 Project Management (lump sum) \$ 7,200
- 015 Due Diligence (lump sum) \$ 2,480
- 055 Schematic Design (lump sum) \$ 4,320
- 070 Construction Documents (lump sum) \$ 8,640
- 080 Agency Review (hourly est.) \$ 4,320\*\*
- 100 Bid/ Construction Phase (hourly est.) \$ 7,000\*\*
- 108 Project Close-Out (lump sum) \$ 1,920
- 301 Surveying (lump sum) \$ 8,250
- 303 Civil Engineering (lump sum) \$ 51,150
- 307 Accessibility Consultant (lump sum) \$ 2,200
- 400 Reimbursables (cost+) \$ 1,200\*\*\*

\* The Consultant may alter the compensation distribution between individual phases or tasks to be constant with the services actually rendered, within the contract maximum.

\*\* Hourly fee provided for Client budgeting purposes based on proposed scope here in. Hourly total as needed to be subject to Section C.5. If fee budget is to be exceeded, it will occur in a professional, diligent, and forthright manner to the extent needed either to procure the required Project permits and/or certificate of occupancy as the external agencies and construction industry are external factors beyond the control of the Consultant.

\*\*\* For Reimbursable Expenses, expenditures made by the Consultant, its employees, and sub-consultants in the interest of the Project will be billed to the Client plus an administrative fee of 10%. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of this agreement, and other, similar, direct Project-related expenditures.

The Consultant is able to start our services upon written acceptance of this Proposal/Agreement. The Consultant will bill the Client monthly for services performed. In order to insure the orderly and continuous progress of the project, the Consultant shall be compensated for their services and expenses ideally within fifteen (15) days but no more than thirty (30) days of the invoice date. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and at the Consultant's discretion may accrue 1.5% simple interest per month. At the Consultant's option, overdue payments may be grounds for termination or suspension of services. The Client shall reimburse the Consultant for all expenses related to collections of compensation due the Consultant. These expenses consist of but are not limited to, Attorney's fees, court cost, lost time, etc.