

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
GILLELAND CREEK BATHHOUSE DESIGN PROJECT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

Whereas, the City of Pflugerville (“City”) and MWM Design Group, Inc. (“Consultant”), entered into that certain Professional Services Agreement (“Agreement”) dated July 26, 2016, for consulting services as more fully described in Article III, Exhibit 1, therein; and

Whereas, the City and Consultant executed a Supplemental Agreement No. 1 to the Agreement on April 20, 2017 in the amount of \$2,530.97 for a total amount of compensation of \$210,392.97 to add additional survey work; and

Whereas, this Agreement expired on July 26, 2017; and

Whereas, the Consultant has not completed all of the work and scope of services contained therein for the total amount of compensation of \$210,392.97; and

Whereas, the City and Consultant desire to enter into a new agreement in order to continue the work and services that have not been fully performed.

Now therefore, the City and Consultant hereby agree as follows:

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 singularly as “Party” or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

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

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

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

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on June \_\_, 2021.

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 the initial MWM DesignGroup, Inc. Agreement and Supplemental Agreement No. 1 ("Agreements") which are attached hereto as Attachment "A" and incorporated by reference as if written and copied herein.

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

### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed the remaining balance of the Two Hundred Ten Thousand Three Hundred Ninety-two Dollars and Ninety-seven Cents (\$210,392.97) as total compensation, to be paid to Consultant as further detailed in the prior Agreements, attached hereto as Attachment "A".

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

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

### **V. OWNERSHIP OF DOCUMENTS**

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

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all

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

## **VI. RECORDS RETENTION**

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

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

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

## **VII. TERMINATION**

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

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

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

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

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt

acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

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

If intended for Consultant, to:       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 "*Gilleland Creek Bathhouse Design Project*" 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.

| Type of Insurance  | Amount of Insurance                                   | Provisions   |
|--|---|--|
| Commercial General (Public) Liability to include Premises/Operations | 1,000,000 per occurrence, 2,000,000 general aggregate | City to be listed as additional insured and provide 30 days’ notice of cancellation or material change in coverage |
| Products/ Completed Operations                                       | Or<br>2,000,000 combined single coverage limit        |  |
| 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  |   |  |
| <b>Contractual Liability</b>   |   |  |
| Business Auto Liability  | 1,000,000 combined single limit                       | City to be provided a waiver of subrogation  |
| Workers’ Compensation & Employers Liability                          | Statutory Limits<br>1,000,000 each accident           | City to be provided a waiver of subrogation  |
| Professional Liability   | 1,000,000   |  |

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

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

## X. INDEMNIFICATION

**10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.**

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

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

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

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



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

## **XI. ASSIGNMENT AND SUBCONTRACTING**

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

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: as detailed in Attachment "A". Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

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

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

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

## **XII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors,

subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### **XIII. CONFLICT OF INTEREST**

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

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

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

### **XIV. AMENDMENTS**

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

## **XV. SEVERABILITY**

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

## **XVI. LICENSES/CERTIFICATIONS**

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

## **XVII. COMPLIANCE**

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

## **XVIII. NONWAIVER OF PERFORMANCE**

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

## **XIX. LAW APPLICABLE**

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

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

## XX. LEGAL AUTHORITY

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

## XXI. PARTIES BOUND

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

## XXII. CAPTIONS

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

## XXIII. INCORPORATION OF EXHIBITS

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

Attachment "A" – Original Agreement and Supplemental Agreement No. 1.

## XXIV. ENTIRE AGREEMENT

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

## XXV. MISCELLANEOUS CITY CODE PROVISIONS

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

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

**25.3 Eligibility Certification.** Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and

acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

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

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

**25.6 Texas Government Code Mandatory Provision.** The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2271) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

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

**CITY OF  
PFLUGERVILLE**

**CONSULTANT  
MWM DesignGroup Inc.**

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

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

Printed Name: Sereniah Breland

Printed Name: Julia Harrod

Title: City Manager

Title: President

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

Date: 6/14/2021

APPROVED AS TO FORM:

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

**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 "*Pflugger, 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<br>(Public) Liability to include<br>coverage for:<br>Premises/Operations<br><br>Products/ Completed<br>Operations<br><br>Independent Contractors<br><br>Personal Injury<br><br>Contractual Liability | 1,000,000 per occurrence,<br>2,000,000 general aggregate<br><br>Or<br><br>2,000,000 combined single<br>coverage limit | City to be listed as<br>additional insured and<br>provide 30 days notice of<br>cancellation or material<br>change in coverage<br><br>City to be provided a<br>waiver of subrogation<br><br>City prefers that insurer be<br>rated B+V1 or higher by<br>A.M. Best or A or higher by<br>Standard & Poors |
| Business Auto Liability   | 1,000,000 combined single<br>limit  | City to be provided a<br>waiver of subrogation  |
| Workers' Compensation &<br>Employers Liability  | Statutory Limits<br>1,000,000 each accident   | City to be provided a<br>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: 6/2/16

Date: July 15, 2016



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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



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- 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.



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**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<br>Pfluger Park | Subproject 2<br>Gilleland Creek<br>Park | Subproject 3<br>Heritage Park | Subproject 4<br>Recreation<br>Center | TOTALS        |
|---|------------------------------|---|-------------------------------|--------------------------------------|---------------|
| <b>MWM DesignGroup</b>                                |                              |   |                               |                                      |               |
| Architecture Design<br>Development                    | \$ 6,500.00                  | \$ 15,000.00                            | \$ 7,500.00                   | \$ 2,000.00                          | \$ 31,000.00  |
| Architecture Construction<br>Documents                | \$ 9,500.00                  | \$ 30,000.00                            | \$ 13,500.00                  | \$ 6,000.00                          | \$ 59,000.00  |
| Civil Engineering Design<br>Development               | \$ 1,000.00                  | \$ 2,000.00                             | \$ 30,322.00                  | \$ -                                 | \$ 33,322.00  |
| Civil Engineering Design<br>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<br>Administration                | \$ 3,500.00                  | \$ 7,000.00                             | \$ 3,500.00                   | \$ 2,000.00                          | \$ 16,000.00  |
| <b>LEAP!</b>  |                              |   |                               |                                      |               |
| Structural Engineering Design<br>Development          | \$ 1,000.00                  | \$ 3,600.00                             | \$ 2,400.00                   |                                      | \$ 7,000.00   |
| Structural Engineering<br>Construction Documents      | \$ 1,500.00                  | \$ 4,700.00                             | \$ 5,000.00                   |                                      | \$ 11,200.00  |
| Structural Engineering<br>Construction Administration | \$ 500.00                    | \$ 1,700.00                             | \$ 1,800.00                   |                                      | \$ 4,000.00   |
| <b>Briley MEP Engineering</b>                         |                              |   |                               |                                      |               |
| MEP Engineering Design                                | \$ 3,900.00                  | \$ 9,880.00                             | \$ 9,680.00                   | \$ 2,940.00                          | \$ 26,400.00  |
| MEP Engineering<br>Construction Administration        | \$ 960.00                    | \$ 1,920.00                             | \$ 1,920.00                   | \$ 640.00                            | \$ 5,440.00   |
| <b>TOTALS</b>   | \$ 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:

\_\_\_\_\_  
MWM DesignGroup, Inc.

1 July 2016

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

JP

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

### OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2016-94718

Date Filed:  
08/04/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

MWM DesignGroup  
Austin, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Pflugerville

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2016-5009  
Professional Services

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) |              |
|---|--------------------------|--|---------------------------------------|--------------|
|   |                          |  | Controlling                           | Intermediary |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
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|   |                          |  |                                       |              |
|   |                          |  |                                       |              |
|   |                          |  |                                       |              |

5 Check only if there is NO Interested Party.

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



*[Signature]*  
 \_\_\_\_\_  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Julia Arrad, this the 4th day of August, 2016, to certify which, witness my hand and seal of office.

*[Signature]*      Madgie Hollingshead      Notary  
 \_\_\_\_\_  
 Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath

**PROFESSIONAL SERVICES  
SUPPLEMENTAL AGREEMENT # 1  
FOR  
PFLUGER, GILLELAND AND HERITAGE PARKS AND PFLUGERVILLE  
RECREATION CENTER BUILDING IMPROVEMENTS PROJECTS**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

FIRM:           MWM DesignGroup

ADDRESS:   305 E Huntland Dr., Suite 200, Austin, TX 78752

This Supplemental Agreement No. 1 to a contract for Professional Services is made by and between the City of Pflugerville, Texas ("City") and MWM DesignGroup ("Consultant"). City and Consultant may be referred to herein singularly as "Party" or collectively as the "Parties."

WHEREAS, the City and Consultant executed an Agreement for Professional Services ("Agreement") on the 2<sup>nd</sup> day of August, 2016 for the Pfluger, Gilleland and Heritage Parks and Recreation Center Building Improvements Projects in the amount of \$207,862.00; and

WHEREAS, it has become necessary to amend the Agreement to modify the provisions for the Scope of Services and Compensation to add additional services and corresponding compensation.

NOW THEREFORE, premises considered, the City and the Consultant agree that said Agreement is amended as follows:

1.

Article III. Scope of Services. Exhibit 1, as referenced, shall be amended by supplementing the Scope of Services to include services shown by the attached addendum to Exhibit 1 titled "Surveying Proposal", which is incorporated herein for all purposes.

Article IV. Compensation to Consultant. Compensation shall be amended to increase the not to exceed amount of \$207,862.00 by \$2,530.97 for an amended not to exceed amount of \$210,392.97 and Exhibit 1, as referenced, shall be amended by supplementing the Schedule of Compensation section as shown by the attached addendum to Exhibit 1 titled "Surveying Proposal," which is incorporated herein for all purposes.

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

**CITY OF  
PFLUGERVILLE**

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

Printed Name: Brandon E. Wade

Title: City Manager

Date: 4/20/2017

**CONSULTANT**

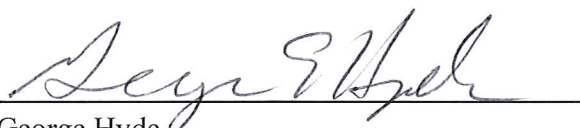
  
\_\_\_\_\_  
(Signature)

Printed Name: Eduardo O. Mendez

Title: Sr. Vice President

Date: 4/19/2017

APPROVED AS TO FORM:

  
\_\_\_\_\_

George Hyde

City Attorney

DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.

mt



# Exhibit 1

## Surveying Proposal

www.mwmdesigngroup.com

Date: April 12, 2017  
Contract: Professional Services Agreement  
Project: Bohl's House Renovation – Heritage Park  
Client: City of Pflugerville PARD  
Contact: James Hemenes  
Address: 400 Immanuel Road  
Pflugerville, Texas 78660  
Attachments: Exhibit "A"

As requested, MWM DesignGroup is submitting this proposal for providing professional services on the above referenced project. Services will be limited to the area approximately shown on Exhibit "A" and will be provided in accordance with following:

### Scope of Services

1. Establish horizontal and vertical control as necessary to perform survey. Horizontal control shall be on an arbitrary basis and vertical control based on an assumed elevation. Provide a benchmark and sufficient horizontal control points for use as construction baseline.
2. Locate by actual on-the-ground survey visible and accessible on-grade and above-grade features, including but not limited to trees (size, location, type and tree tag), pavement edges, pavement marking, sidewalks, ramps, curbs, fences, signs, flag poles, buildings (including FF elevation), utility poles, guys, overhead utility lines, utility meters, utility valves, fire hydrants, manholes, clean-outs, pull boxes, and other surface utility features.
3. Provide contours at one foot interval. Elevations will be taken on an approximate 50' x 50' grid, at abrupt changes in grade and along drainage courses. Elevations of survey points will be on a separate layer, but will not be part of the final plotted drawing.
4. Provide spot elevation at top of accessible utility manhole and valve box covers. Provide invert elevation of manholes and elevation of pipes entering or exiting accessible sewer and storm drain structures.
5. Provide final drawing showing data outlined above as one base map at a scale of 1" = 20' on 22"x 34" sheet size and as an AutoCad Civil 3D file utilizing the National Cad Standard (NCS).

Services can begin as soon as written authorization is received and can be completed in about 2 weeks (predicated upon suitable weather conditions).

MWM DesignGroup proposes to provide the services outlined above for a lump sum amount of \$2,530.97.

### Excluded Services

Services that are not provided under this Agreement specifically include, but are not limited to: boundary survey or delineation of boundary/ROW lines; research and mapping of existing easements; field verification of tree subspecies by arborist; research and mapping of underground utilities; survey in support of SUE services provided by others; surveys in support of environmental surveys performed by others; surveys in support of geotechnical investigation services provided by others; construction phase surveying and other services or expenses which may become necessary for the completion of this project but which are not reasonably

305 E. Huntland Drive  
Suite 200  
Austin, TX 78752  
p: 512.453.0767  
f:512.453.1734



James Hemenes  
April 12, 2017  
Page 2

anticipatable at this time. Such services may be performed as Additional Services to this Agreement, if authorized by Client.

**Land Surveying**

Complaints on the land surveying services provided by MWM DesignGroup can be directed to the Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753, (512) 239-5263. MWM DesignGroup TBPLS Firm Registration No.: 10065600.

This proposal is valid for a period of 60 days from date of proposal. If you concur, please include this proposal as part of the task order for the above referenced project.

**Approved:**

Eduardo O. Mendez  
Eduardo O. Mendez, RPLS  
Principal | Sr. Vice President  
MWM DesignGroup

4/12/17  
Date

