

**PROFESSIONAL SERVICES AGREEMENT
FOR
2014 GENERAL OBLIGATION
MANSIONS AT STONE HILL PARK DEVELOPMENT PROJECT**

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, pursuant to 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 June 16, 2015 and terminate on June 16, 2016.

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 Thirty Thousand Six Hundred Fifty Four Dollars (\$ 30,654) 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: Dan Franz, P.E., CFM
City Engineer

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 “*2014 General Obligation Mansions at Stone Hill Park Development 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:
City of Pflugerville

Insurance Requirements

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

All insurance companies and coverage must be authorized by the Texas Department of

Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

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

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

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

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

City of Pflugerville
Capital Improvement Program
P.O. Box 589

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 FULLY INDEMNIFY, DEFEND 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 resulting from the negligent or intentional acts or omissions, intellectual property infringement, or failure to pay a subcontractor or supplier of the Consultant, its employees, agents and/or assigns. The 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 officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.1 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 and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.3 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.

10.4 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: CP&Y 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.



Date: 18 May 2015
Subject: Professional Services Fee Proposal
Project: Mansions at Stone Hill Park
PLR-Preliminary Landscape Report
Owner: City of Pflugerville
Client: Parks and Recreation Department
Contact: James Hemenes
Parks and Recreation Director
Address: 400 Immanuel Road
Pflugerville, 78660
Phone: 512-990-6357
Email: jamesh@pflugervilletx.gov

Enclosures: Exhibit A – MWM Survey Proposal
Exhibit B – CP&Y Proposal
Exhibit C – Preliminary Project Schedule

The City of Pflugerville Parks and Recreation Department has requested a proposal for Preliminary Landscape Report and conceptual design development for the proposed park at Mansions at Stone Hill. The park is located on Town Center Drive near the Highland Park Neighborhood in Pflugerville, Texas.

The scope of the project includes providing a quantifiable basis for the evaluation of the current park programming and recommendations for the final park program. Recommendations may include deleting, adding, modifying or keeping park programming elements based on the programming metrics, owner requirements and conceptual design development of the Mansions at Stone Hill Park. MWM will also prepare a tree and topographic survey and perform a desktop environmental analysis of the park.

SCOPE OF SERVICES

Upon notice to proceed, MWM will provide landscape architectural and civil engineering services in support of the Mansions at Stone Hill Park project and is ready to begin immediately.

Tree and Topographic Survey

MWM will provide an actual on the ground tree and topographic survey of the park, including establishing horizontal and vertical control, with one foot contour intervals, showing approximate location of boundary lines, showing easements as indicated on subdivision plat and provide finished drawing to owner. The tree and topographic survey shall be used for the evaluation of the existing programming and the development of construction document package. Refer to Exhibit A for detailed scope description.

Desktop Environmental Analysis

As a subconsultant to MWM, CP&Y shall perform a desktop review of environmental constraints within the project area. Following a review of the data obtained, the CONSULTANT shall conduct a limited site visit from adjacent public right-of-way to supplement information obtained through desktop resources. Information obtained shall be compiled, analyzed, and mapped in a Geographic Information System (GIS). A Draft Environmental Constraints Map will be prepared that displays potential constraints. An Environmental Constraints Summary Report will be prepared that summarizes the potential constraints and provides a recommendation for more detailed field investigations and potential permitting requirements. Refer to Exhibit B for detailed scope description.

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



Design Services

MWM shall review owner provided park programming, master plan information, stakeholder input and other relevant data for the proposed Mansions at Stone Hill Park. MWM will attempt to classify, quantify and analyze this information to verify the appropriateness of the park programming. MWM will also develop a detailed conceptual plan to verify the adequacy of the programming elements and will include additional owner requirements for the design of the park.

MWM will document the analysis and park design and compile the findings into a single report: Preliminary Design Report (PDR). MWM anticipates the PDR will provide the information listed below

1. Provide a description of project components
2. Stormwater Management Assessment
 - a. Data Collection
 - i. Perform online research to obtain available floodplain data and calculations. Floodplains models will be obtained from FEMA, if not available through the City. [Include \$400 reimbursable fee for obtaining models from FEMA.]
 - ii. Review available site and watershed topography.
 - iii. Visit the site to observe hydraulic site conditions.
 - iv. Meet with City staff to discuss the following:
 1. Known stormwater deficiencies, such as citizen complaints
 2. Adjacent proposed projects
 3. City's objectives for stormwater management, including local and creek flood control, water quality control, and erosion control
 - b. Stormwater management plan
 - i. Prepare conceptual stormwater management plan. The plan will summarize the data collection and will present qualitative recommendations for achieving the City's objectives for the site, including the process for compliance with stormwater management regulations.
3. Site Assessment including review of existing site constraints (topographic, access, available utilities and capacity, etc.) and development requirements
4. Verification of the project components with master plan information, stake holder input, etc.
5. Provide conceptual plan showing the general layout and location of the existing site conditions and of the significant project components.
6. Provide analysis for the constructability of the project including a review of the existing conditions and noting particular features, alignments, and constraints affecting construction of project components
7. Provide an opinion of construction cost estimate for each of the project components, showing quantities, unit prices, and total costs.
8. Prepare a list of all permits required for the proposed project
9. Prepare an overall estimated project schedule
 - a. design period;
 - b. period of time to obtain required permits;
 - c. solicitation of bids and awarding of contracts, and
 - d. construction period
10. Include copy of tree and topographic survey
11. Include copy of Environmental Constraints Map and Report



MWM has scheduled the PDR Phase (including survey, environmental analysis and design services) for 100 days from notice to proceed. Refer to Exhibit C for detailed description.

MWM anticipates providing one draft and one final for the project PDR. MWM also anticipates up to 4 project coordination and/or review meetings with owner.

Following the preparation and delivery of PDR, MWM anticipates meeting with City Site Development Permit staff to review the preliminary report. MWM also anticipates that an Open House will be part of the design services. MWM assumes the City of Pflugerville will organize the Open House (invitations, provide venue, advertisements, etc) and that MWM will be responsible for presenting the Conceptual Plan and findings of the Preliminary Design Report. MWM will prepare 1-2 boards/exhibits (approximately 24"x36") for the Open House.

Deliverables

MWM anticipates the deliverables for the project to include the items listed below

- Tree and Topographic Survey
- Desktop Environmental Constraints Map and Report (one draft and one final)
- Preliminary Design Report (one draft and one final)
- Presentation Boards for Open House (1-2 boards, 24"x36")

Assumptions

This proposal has been prepared in accordance with the following assumption. Should any of these assumptions be proven invalid, additional services or contract modifications may be required

1. Additional meetings beyond those noted above may require contract modification.
2. The owner will establish a fixed construction budget prior to or at notice to proceed.
3. If detailed surveys (e.g. wetland delineations, cultural resource surveys, Phase I ESA, species surveys) within the project area are required, those services would be conducted under supplemental work authorization(s).
4. MWM anticipates the project shall include Construction Documentation, Permit and Construction Phase services as a continuation of the Preliminary Design Report phase.

SCHEDULE OF COMPENSATION

Professional services shall be compensated on an hourly not to exceed basis as follows:

Tree and Topographic Survey	\$	7,526.00
Environmental Constraints Map and Report	\$	9,584.00
Design Services and Preliminary Design Report	\$	13,044.00
Reimbursables	\$	500.00
Total	\$	30,654.00

Reimbursable Expenses

Reimbursable expenses are defined as follows and shall be invoiced at direct cost (invoice) plus 5% for overhead unless specifically stated otherwise elsewhere in this Agreement.

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



1. Expedited shipping and mailing expenses.
2. 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 in accordance with the base contract.

GENERAL CONDITIONS

Excluded Services

Services that are not provided for in this Agreement specifically include, but are not limited to: survey services; subsurface utility engineering; traffic impact studies; traffic signal design; trench safety system design; geotechnical analyses; hazardous site assessments; environmental impact assessments; floodplain studies; design of offsite improvements except as specifically included as basic services. Such services may be performed as additional services to this agreement, if authorized by the City.

Responsibilities of Others

In accordance with accepted professional practice it is the responsibility of the property 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 services described in this document. Certain unusual or unforeseeable conditions not identifiable by visual observation 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, 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.

Approved:



MWM DesignGroup, Inc.

5/18/15

Date

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



Exhibit A

www.mwmdesigngroup.com

Date: May 15, 2015
Project: Mansions at Stone Hill Park- Topographic Survey
Client: City of Pflugerville
Parks and Recreation Department
Contact: James Hemenes
Parks and Recreation Director
Address: 400 Immanuel Road
Pflugerville, Texas 78660
Phone: 512.990.6357 Fax: 512.990.0932
Enclosure: Exhibit "A"
Email: jamesh@pflugervilletx.gov

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

Surveying Services

1. Perform GPS survey to establish horizontal and vertical control based on Texas State Plane, Central Zone NAD 83(2011) and NAVD 88 and provide a benchmark and sufficient horizontal control 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 edge of pavement, pavement marking, curbs, gutters, driveways, sidewalks, trees (size, location, subspecies and tree tag for trees 3" or greater in diameter), culverts, headwalls, utility valves, utility meters, manholes, hydrants, clean-outs, inlets, signs, fences, utility poles, guy anchors, overhead lines 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 and will not be part of the final plotted drawing.
4. Locate sufficient boundary monumentation and show approximate location of boundary lines. Show existing easements as shown on subdivision plat.
5. Provide drawing showing data outlined above on 22" x 34" sheet size at a scale of 1"=20' and as an AutoCad Civil3D file utilizing the National Cad Standard (NCS).

Services can begin as soon as written authorization is received and can be completed in about 3 weeks (predicated upon suitable weather conditions).

MWM DesignGroup proposes to provide the services outlined above for a lump sum amount of \$7,526.00.

Excluded Services

Services that are not provided under this Agreement specifically include, but are not limited to: boundary survey; acquiring certificates/abstracts of title or title reports; research and mapping of existing easements, except as shown on subdivision plat; services relating to land or easement acquisition; research or mapping of existing underground utilities; field verification of tree subspecies by arborist; surveys in support of SUE services provided by others; surveys in support of geotechnical investigation services provided by others; surveys in support of

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Suite 200
Austin, TX 78752
p: 512.453.0767
f: 512.453.1734



environmental surveys performed 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 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

5/15/15
Date



EDINBURGH CASTLE RD
CHRIGHTON CASTLE BEND

LOT 23
9.53 AC.

AREA UNDER
CONSTRUCTION

APPROX.
LIMITS OF
TOPOGRAPHIC/TREE
SURVEY

TOWN CENTER DR

LOT 24
1.82 AC.

EXHIBIT 'A'



305 E. Huntland Dr.
Suite 200
Austin, Texas 78752
p: 512.453.0767
f: 512.453.1734

EXHIBIT:

SCALE:

DATE:

SCOPE OF SERVICES
Mansions at Stone Hill Park
May 15, 2015

The work to be performed by CP&Y, Inc. (CONSULTANT) for MWM DesignGroup (CLIENT) shall consist of providing environmental services for the proposed 9.3-acre Mansions at Stone Hill Park, a community park being developed by the City of Pflugerville (CITY). This scope of services and the corresponding fee estimate are based on the CONSULTANT identifying and reporting potential environmental constraints associated with the proposed park site. Any additional services (i.e., detailed surveys, permitting) that would be required to obtain environmental compliance for the project would be covered under supplemental work authorizations.

The CONSULTANT shall provide the following services under this work authorization:

Project Management

Task 1: Progress Reports and Invoices

The CONSULTANT shall prepare monthly progress reports and invoices outlining activities completed during the reporting period, activities planned for the coming period, problems encountered, and actions to remedy them.

Task 2: Meetings and Coordination

The CONSULTANT shall coordinate with the CLIENT, as needed, throughout the duration of this work authorization to address project concerns or issues. The CONSULTANT shall attend up to two (2) meetings with the CLIENT and the CITY to discuss the project.

Environmental Studies and Documentation

Task 1: Environmental Constraints Identification

The CONSULTANT shall perform a desktop review of environmental constraints within the project area. Constraints to be identified include but are not limited to:

- a. Cemeteries
- b. Parks, Preserves, Trails & Greenbelts
- c. Soils and vegetation communities
- d. Known caves, karst features, seeps and springs, including those known to be occupied by endangered species

- e. Edwards Aquifer Recharge & Contributing Zones
- f. Hazardous material sites
- g. National Register listed Historic Properties
- h. Archeological sites from the Texas Archeological Research Laboratory
- i. Data from the Texas Parks and Wildlife Department's Natural Diversity Database
- j. United States Fish and Wildlife Service's Critical Habitat Mapper
- k. National Wetlands Inventory Data
- l. Floodplains
- m. National Hydrography Dataset
- n. Land uses identified through aerial photo interpretation and a limited site visit

Following a review of the data obtained, the CONSULTANT shall conduct a limited site visit from adjacent public right-of-way to supplement information obtained through desktop resources.

Note: If detailed surveys (e.g., wetland delineations, cultural resource surveys, Phase I ESA, species surveys) within the project area are required, those services would be conducted under a supplemental work authorization.

Task 2: Environmental Constraints Map and Summary Report

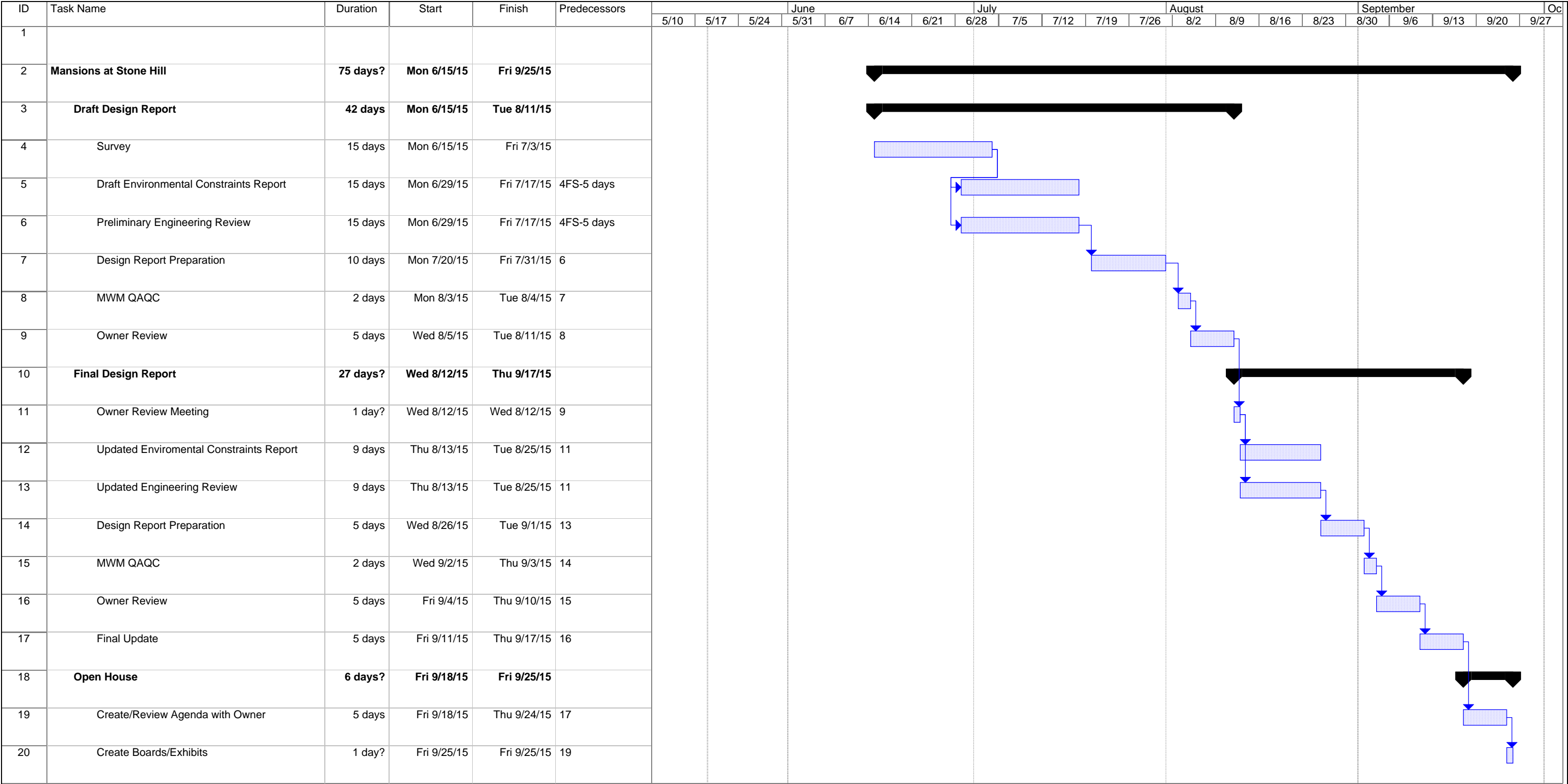
Information obtain from Task 1 shall be compiled, analyzed, and mapped in a Geographic Information System (GIS). A Draft Environmental Constraints Map will be prepared that displays potential constraints. An Environmental Constraints Summary Report will be prepared that summarizes the potential constraints and provides a recommendation for more detailed field investigations and potential permitting requirements.

The Draft Environmental Constraints Map and Summary Report will be submitted the CLIENT for review. The CONSULTANT will revise the Draft Environmental Constraints Map and Summary Report to address one (1) round of CLIENT comments. The CONSULTANT will then submit a Final Environmental Constraints Map and Summary Report to the CLIENT for approval.

Deliverables:

- One Draft Environmental Constraints Map (24 in. by 36 in.) and Summary Report (2 hard copies and one digital version)
- One Final Environmental Constraints Map (24 in. by 36 in.) and Summary Report (2 hard copies and one digital version)

Exhibit C



Project: Mansion Preliminary Schedule
Date: Tue 5/19/15

Task

Split

Progress

Milestone

Summary

Project Summary

External Tasks

External Milestone

Deadline

Page 1

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: Julia Harrod, PE

Title: City Manager

Title: President

Date: _____

Date: 5/27/15