

**PROFESSIONAL SERVICES AGREEMENT
FOR
1849 Park Phase 2**

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 Burditt Consultants, LLC (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

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

I. DEFINITIONS

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

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

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

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

II. TERM

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

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

III. SCOPE OF SERVICES

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

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

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

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed One-Million, Nine-Hundred Thousand, Fifty Dollars (\$1,915,050.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

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

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

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

VII. TERMINATION

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

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

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

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

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

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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

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

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

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

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

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

VIII. NOTICE

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

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

If intended for Consultant, to: J. Shane Howard
310 Longmire Road
Conroe, TX 77304

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

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

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

City of Pflugerville

Insurance Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all

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

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

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

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

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

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third

party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

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

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Bleyl Engineering, Dudley Engineering, Cleary Zimmerman Engineers, and ARC. 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" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

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

XXV. MISCELLANEOUS CITY CODE PROVISIONS

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

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

state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

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

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

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

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

EXECUTED and AGREED to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

BURDITT CONSULTANTS, LLC



(Signature)

(Signature)

Printed Name: Sereniah Breland

Printed Name: Charles Burditt

Title: City Manager

Title: President

Date: _____

Date: 7/11/21

APPROVED AS TO FORM:

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

Exhibit 1
PROJECT SPECIFIC SCOPE OF SERVICES & FEE PROPOSAL

PROJECT UNDERSTANDING

The City desires a park design for the 1849 Park property located at 16430 Cameron Road Pflugerville, TX. The most current master plan of the facility includes concepts for six additional baseball/softball fields, an architectural complex to include concessions and restrooms, expansion of Phase 1 parking, utility improvements to support the development, any additional miscellaneous improvements that may be determined during the public engagement phase.

The Consultant will conduct cursory market and financial analyses based on stakeholder and public feedback to vet the Master Plan intent and make recommendations for changes. The Consultant will take City approved program intentions from the feasibility and new Master Plan to develop design and construction documentation for construction of park amenities consistent with the City's goals and financial constraints.

The City is hiring Consultant to provide design services to be performed in three (3) Phases:

I. Phase I – Pre-Design

A. Feasibility

1. Stakeholder & Public Engagement
2. Cursory Market Analysis
3. Pre-Design Data Collection & Analysis (Surveys, Geotechnical, Archaeological, etc.)

B. Master Plan

1. Programming
2. Master Plan Concepts
3. General Operating Performance Financial Analysis
4. Capital Cost Estimate

II. Phase II – Preliminary Design

- A. Schematic Design
- B. Design Data Collection & Analysis
- C. Capital Cost Estimate

III. Phase III – Final Design

- A. Architectural Design Development
- B. Architectural and Engineering Construction Documents
- C. Bidding Support & Construction Phase Services

The following Scope of Services exclusively addresses each Phase of the project for both Basic and Additional Services required to complete the project.

SERVICES GENERALLY:

1. **Basic Services** includes the following technical, consulting, and design disciplines which are included in the Basic Services Fee as depicted in the Fee section of this proposal:
 - a. Stakeholder & Public Engagement
 - b. Specific Stakeholder User Groups or Individuals
 - c. General Consulting Services
 - Market Analysis
 - Financial Analysis
 - d. Planning
 - e. Architectural Design
 - f. Landscape Architectural Design Elements
 - Planting
 - Hardscape
 - Irrigation
 - Wayfinding/Educational Sign layout and details
 - g. Civil Engineering Design
 - h. Structural Engineering Design
 - i. MEP Engineering Design

Any services not listed above or changes to the Scope of Services will be treated as Additional Services.

2. **Supplemental Services** include certain project requirements potentially necessary for the fulfillment of the Basic Services, but which are treated separately from Basic Services due to unknown need, timing, scope, and/or cost which are indeterminable at the outset of the project until several preliminary design matters are determined.

Such requirements will be determined collaboratively between the City and Burditt throughout the project duration. Any of these services which the City determines should be addressed as Supplemental Services by Burditt will be followed by formal proposals from subconsultants to be approved by the City with costs reimbursed to Burditt plus applicable administrative markup fees.

A separate budget will be established in the Fee section as a limit for which any required and approved Supplemental Services will draw down from that limit.

For this project, the potential supplemental project requirements are anticipated to include:

a. BSS 4.0 Environmental Services

- 1) Wetland delineation and other USACE Section 404 requirements (as required)
- 2) United States Fish and Wildlife (USFW) studies or investigations
- 3) Environmental Site Assessment (as required)
- 4) Archaeological Investigation and Permitting (as required)

b. BSS 5.0 Surveying Services

- 1) Surveying by a licensed surveyor (metes & bounds, easements, utilities, existing improvements, trees required by ordinance, topography, etc.)

c. BSS 6.0 Geotechnical Engineering Services

- 1) Geotechnical engineering report with soils boring.

d. BSS 7.0 Drainage Design Services

- 1) Drainage/Hydrology Studies (as required)

e. BSS 8.0 Stormwater Management Plan

3. **Additional Services** include, but are not limited to, any changes due to revisions in the base data relating to this matter, additional design changes following approval by the City, and any other services requested by the City or previously not contemplated in the services defined under Basic or Supplemental Services.

Substantive changes or increases to the Project Scope and Program beyond those identified in Project Understanding and Scope of Basic Services may be considered Additional Services and require mutually agreed upon fee adjustments.

Additional Services will be undertaken only with prior written authorization from the City.

Additional Services also include the following specialties as they are uniquely determined by individual project needs in highly specific circumstances and not contemplated in Basic Services Fees:

- a. Cost Recovery Analysis
- b. Life Cycle Cost Analysis
- c. Hazard remediation for Asbestos, Brownfield Sites, site contamination, and other hazardous elements.
- d. Fast-Track Design Services
- e. Re-design of key elements of project after receipt of prior Owner Approval
- f. Commercial Food Service Design
- g. Fire Suppression System Design (Performance Specification will be provided if required by Code)
- h. Lightning Protection Design
- i. Telecommunications/Data Design (Conduits in base design)
- j. Audio/Video systems Design (Conduits in base design)
- k. Security systems Design (Conduits in base design)
- l. Emergency Power Generation Systems/Design
- m. Construction Materials Testing (By contractor)
- n. As-Built Plans or Record Drawings
- o. Measured Drawings of Existing Facilities
- p. Existing Facilities Survey/3D Scanning
- q. Traffic Impact Analysis (TIA).
- r. LEED Design or Application/Audit.
- s. Building Information Models for post construction use
- t. Commissioning
- u. Fire Hydrant Flow Test for Fire Suppression and/or Plumbing Design

PROJECT SPECIFIC SCOPE OF SERVICES

The Project Specific Scope of Services (“PSS”) proposed for this project is aligned with the City’s Basic Scope of Services (“BSS”) or in addition to the BSS. Each task is aligned with an existing BSS Task number or includes a new task number in accordance with the methodology of the BSS. New tasks are referenced with “PSS #.##.”

Note that most tasks which follow include **BSS 1.0 Project Administration and Coordination Services** requirements integrated into the various phases and elements.

As such, the PSS includes the following:

PHASE I -PRE-DESIGN

A. Feasibility

1. Stakeholder & Public Engagement (BSS 1.11)

- a. With the assistance and input of staff, Consultant will develop a Stakeholder & Public Engagement Plan to establish a map for connection with relevant audiences and collect valuable information required for developing a responsive plan.
- b. Task goals include:
 - i. Reaffirm goals and objectives for public and City involvement, and determine the means and methods by which they will be reached;
 - ii. Review of trend analysis with respect to public amenities, with a focus on statewide and regional supply and demand, and provide recommendations for alternative approaches;
 - iii. Establish meeting dates and locations, and how the public will be notified or invited to participate;
 - iv. Establish City staff meetings or workshop dates when personnel and officials (or invitees) to gain reasonable consensus for vision direction, including that of various other departmental and elected official input;
 - v. Develop an evaluation criteria to be documented throughout the process;
 - vi. Assist in identification of focus or user groups and the means by which they will be included;
 - vii. Provide content and assistance for use in web-oriented media and assist with typical public relations efforts.
- c. From these tasks, the Final Public Engagement Plan will be completed with Goals and Evaluation Criteria.

- d. Public and Stakeholder groups will be engaged in the manner mutually determined by the City and Consultant in the Stakeholder & Public Engagement Plan to solicit relevant feedback regarding demand for amenities and important ancillary market information, desired amenities, and other key information important for development of push market needs to potentially be considered for the park.

2. **Cursory Market Analysis (PSS 1.13)**

- a. Conduct demand assessment to include:
 - i. Incorporation and analysis of Public and Stakeholder feedback garnered in workshops, events, surveys, and other instruments during the aforementioned engagement tasks,
 - ii. Publicly available demographic and psychographic data regarding usage of sports and recreational activity, spending, and consumer habits relevant to the park
- b. This section of the assessment will be collated to establish a picture of demand and service need to be further refined to specific and targeted customer segments along with the key attributes of features those segments value.
- c. Conduct capacity assessment to include:
 - i. Surrounding regional facility capacity and offerings relevant to amenities sought by the City, stakeholders, and the public
- d. This section of the assessment will be collated to establish a picture of market segments and capacity to be further refined to those specific market segments potentially accessible to the City via the park
- e. Synthesize customer and market segments into a value proposition matrix to help determine desirable park programs customized to the City's desired target customer segments.
- f. The City will use this information to determine program goals and desires.

3. **Pre-Design Data Collection and Analysis**

- a. Conduct Phase I Environmental Site Assessment as required (Supplemental Service) **(BSS 4.4)**
- b. Surveying by a licensed surveyor (metes & bounds, easements, utilities, existing improvements, trees required by ordinance, topography, etc.) (Supplemental Service) **(BSS 5.0)**
- c. Determine need for any additional studies and what stage of the process they should occur (e.g. archaeological, wetlands or USF&W determinations or studies, drainage/hydraulic, etc.) (Supplemental Service) **(BSS 4.0)**
- d. Consultant will coordinate all such tasks and ensure reports and documents are provided to the City. **(BSS 4.0)**

- e. Consultant will work with the City to assess impacts to project program, goals, and design, and determine strategies to incorporate findings into design considerations.
(BSS 2.1)

B. Master Plan

1. Programming (BSS 2.2)

- a. Collaboratively weigh various findings in market analyses for alignment with City goals and financial constraints
- b. Work closely with staff to evaluate the previous master plan (2016) and its current application as to the needs of the City of Pflugerville and suitability of program elements for the 1849 Park site
- c. Compile program statement for ultimate approval by the City

2. Master Plan Concepts (BSS 2.2)

- a. Develop site and amenity layouts in plan view as determined by the approved program statement
- b. Prepare a variety of site plan iterations for evaluation and cost estimating
- c. Develop select renderings and concepts to best communicate program intent to City's intended audiences

3. General Operating Performance Financial Analysis (PSS 1.14)

- a. Develop high level operating cash flow pro forma for program amenities based on available data.

4. Master Plan Capital Cost Estimate (BSS 2.2)

- a. Develop high-level Opinion of Probable Cost (OPC) estimate for use by the City in choosing an approved budget for Phase II – Preliminary Design

5. Master Plan/Feasibility Report and Approval (BSS 2.2)

- a. Compile all previous elements into a single Master Plan & Feasibility Study document for review and approval by the City
- b. Prepare Master Plan revisions as needed based on staff input
- c. Present findings to any stakeholders or other bodies as requested by the City
- d. City will approve a design budget for use in Phase II – Preliminary Design

PHASE II – PRELIMINARY DESIGN

A. Schematic Design

1. Meetings with City to coordinate design intention and preliminary program needs based on approved Master Plan & Feasibility Study, which will include approaches for a fully constructed as well as phased approach project, civil improvements, Consultant team member roles, and distribute agenda and project timeline. **(BSS 1.10)**
2. Design Master Plan concepts in accordance with the Master Plan & Feasibility Study previously approved in Phase I **(BSS 2.2)**
3. Design in accordance with Pflugerville’s Land Development Regulations and any other relevant regulatory requirements **(BSS 2.1)**
4. Research preliminary site issues regarding general topography, accessibility, drainage, and general suitability for project use. **(BSS 2.1)**
5. Conduct cursory field evaluation of strategic trees within project boundary and consider candidates for preservation, provide hazard tree assessment, flagging, and analysis of project site related trees. **(BSS 2.1)**
6. Coordination with TxDOT and any relevant regulatory or jurisdictional entities affecting the site, associated roadways, and/or other issues related to drainage, transportation, or other relevant subjects. **(BSS 4.6)**
7. Schematic Design will also include civil engineering schematic design including, but not limited to, general estimates of water and wastewater demands for the site, parking requirements, utilities and other relevant factors related to the potential programs on the site. **(BSS 2.2)**
8. Meet with City as necessary to review concepts **(BSS 1.10)**
9. Secure interim approval of a Preliminary Schematic Design and Cost Estimate **(BSS 1.10)**
10. Revise and present to relevant stakeholders the Preliminary Schematic Design and Cost Estimate for both a fully constructed and a phased approach **(BSS 1.11)**
11. Secure City approval of a final Schematic Design and Cost Estimate to update design budget for development of construction documentation for Phase III – Final Design. **(BSS 1.10)**

B. Design Data Collection & Analysis

1. Conduct geotechnical investigation and report for the site. Depending on the ultimate site program, this task may be delayed or segmented into multiple pieces in later stages of the Pre-Design or Design process. (Supplemental Service) **(BSS 6.0)**
2. Conduct additional environmental impact site analyses as required from earlier findings (Supplemental Service) **(BSS 4.4)**

3. Conduct any other additional ancillary investigations and reports as necessitated by existing conditions, park program development, or other factors (Supplemental Service) **(BSS 4.0)**

C. Capital Cost Estimate

1. Revise capital cost estimate for approval by the City **(BSS 2.2)**

D. Preliminary Design Deliverables:

1. City-approved Schematic Design
2. Revised and updated Cost Estimate for City Approval
3. Presentations and meetings as required by the City for communication of the Schematic Design
4. City will approve a design budget for use in Phase III-Final Design

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PHASE III – FINAL DESIGN

A. Architectural Design Development (All following tasks are assigned to BSS 3.0 unless denoted otherwise)

1. Proceed with Design Development services (Architecture, Civil Engineering, Structural Engineering, MEP Engineering, Landscape Architecture, and Irrigation) to further develop staff- approved Final Schematic Design to prepare Design Development Drawings.
2. Prepare Preliminary Civil Engineering, Structural Engineering, MEP Engineering, Architecture, Landscape Architecture Drawings and Irrigation Design Development Drawings.
3. Facilitate a pre-development meeting with the City staff to confirm relevant development, code requirements, including fire lane access requirements, tree planting or preservation requirements, driveway access, etc. **(BSS 1.9)**
4. Prepare Draft/Outline Specifications which include but are not limited to site and civil elements, lighting/plumbing fixtures, HVAC systems, door hardware/ card reader requirements exterior/interior finishes, equipment, and built-in furnishings for review and approval by City staff.
5. Meet with key City staff to review Design Development drawings and Outline Specifications at regular intervals. **(BSS 1.9)**
6. Coordinate with City IT (technology) staff to provide conduit, power, and data and security infrastructure in Drawings including camera and data drop conduits as required for City provided/procured Structured Cabling/Communications, Audio/Video, and Electronic Security systems.
7. Revise drawings, details, Outline Specifications, and updated OPC as applicable. **(BSS 3.0)**
8. Present Final Design Development Drawings, Outline Specifications, and updated OPC. **(BSS 1.11)**
9. Upon approval of Design Development Phase and OPC by City, proceed with Construction Document Phase.

B. Architectural and Engineering Construction Documents (All following tasks are assigned to BSS 3.0 and 10.0 unless denoted otherwise)

1. Revise and update Design Development drawings from Architect, Civil/MEP/Structural Engineers, Landscape Architect, Licensed Irrigation Designer, as required to prepare Construction Documents.
2. **BSS Task 7.0 Drainage Design Services** will include the following:
 - a. Site civil design is included in Basic Services **(BSS 3.0 and 10.0)**

- b. Other **BSS 7.0** tasks listed below will be treated as Supplemental Services due to unknown project limits and undefined program scope to include:
 - 1) H&H analysis
 - 2) Offsite watershed identification
 - 3) Scour Analysis, and
 - 4) Channel modification and flood mitigation design
- 3. **BSS Task 8.0 Stormwater Management Plan** will be treated as an Supplemental Service due to unknown project limits and undefined program scope
- 4. **BSS Task 9.0 Tree Preservation Services** will be treated as a Basic Service
- 5. Review and develop bidding requirements (front end documents) with staff/team.
- 6. Conduct initial assessment and preliminary accessibility review discussions with Burditt's Architect and Registered Accessibility Specialist (RAS). (**BSS 10.6b**)
- 7. Review Construction Documents with the City at specific progress review milestones (30% (**BSS 10.2**), 60% (**BSS 10.3**), 90% (**BSS 10.4**), and 100% (**BSS 10.5**)) as approved by appropriate City staff members with professional oversight. At 60% provide comprehensive list of architect team provided specifications required for the project.
- 8. Update OPC at each progress review. (**BSS 10.1 thru 10.5**)
- 9. Produce Final Sealed Architecture Plans, Details and Specifications. (**BSS 3.0**)
- 10. Produce Final Sealed Engineering (Civil, Structural, MEP) Plans, Details and Specifications. (**BSS 3.0**)
- 11. Produce Final Sealed Landscape Architecture Plans, Details and Specifications. (**BSS 3.0**)
- 12. Produce Final Sealed Irrigation Plans, Details and Specifications. (**BSS 3.0**)
- 13. Produce final sealed construction project manuals for bidding, including but not limited to City provided front end docs, technical specifications, geo-tech report. (**BSS 3.2**)
- 14. Submit for TDLR (TAS 2012) Review to Registered Accessibility Specialist (RAS). (**BSS 10.6b**)
- 15. Submit construction documents to Authorities Having Jurisdiction (AHJ) for Permit Review and address any review comments. (After final review with City) (**BSS 10.6a**)

C. Bidding Support and Construction Phase Services

Project Manual (i.e., bidding requirements), Bidding/Contract Award Management Support, and Construction Contract Administration services.

- 1. Prepare Project Manual (bidding requirements and specifications) and assist staff with

Bidding, Requests for Information (RFI), and Addendums as required. **(BSS 10.5)**

2. Prepare electronic copies of the bid package (sealed drawings and project manual) for distribution to potential bidders. **(BSS 10.5)**
3. Facilitate mandatory pre-bid meeting with City staff to review project scope, instructions to bidders, bidding dates, and probable construction timelines/deadlines. **(BSS 11.1)**
4. Respond to Requests for Information (RFI), questions from bidding contractors. **(BSS 11.2)**
5. Prepare bid evaluation and provide contract award recommendations to City Staff. **(BSS 11.4)**
6. Coordinate (or in coordination with the City) the Project Pre-Construction Conference. **(BSS 12.1)**
7. Attend scheduled construction progress meetings at regular intervals. **(BSS 12.4)**
8. Provide Construction Observation reviews appropriate to the stage of construction to **(BSS 12.5)**:
 - a) Become generally familiar and remain so with, and keep the City staff generally informed about, the progress and quality of the portion of the construction completed. Prepare monthly Observation Reports to be submitted with monthly invoice. Include narrative and site photos.
 - b) Make reasonable efforts to identify and document defects and deficiencies in the construction.
 - c) Determine generally whether the construction is being performed in a manner indicating that the project, when fully completed, will be in accordance with the plans and specifications.
 - d) Notify the City in writing of any observed substantial deviation from the plans and specifications that may prevent the facility from being occupied or utilized for its intended use.
9. Issue Observation Reports to Contractor and City staff following site visits. **(BSS 12.5)**
10. Review Change Orders and provide recommendations to address changed or unforeseeable conditions that may arise during construction. **(BSS 12.14)**
11. Respond to contractors RFI's and Issue Architect's Supplemental Instructions (ASI) to modify the contract documents as required due to unforeseen conditions or demonstrably insufficient information to complete the Work. **(BSS 12.7)**
12. Perform all required General Contractor Submittal Reviews for conformance of information provided with the design intent of the Contract Documents, including

shop drawings, product submittals, test results, and other submittals from vendors and contractors. Review of submittals shall not be for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. **(BSS 12.6)**

13. Perform Preliminary Completion review of the project to prepare punch list items for full and final completion. **(BSS 12.11)**
14. Submit Final Completion Report to Contractor and City staff. **(BSS 12.11)**
15. Review and certify construction progress Pay Applications as submitted by Contractor. **(BSS 12.10)**
16. Communicate and direct contractor to prepare and deliver as-built drawings, specifications, and other Close-out documents per General Requirements. **(BSS 12.12)**
17. Review Contractor provided as-built drawings and specifications and Close-out documents. Submit final Close-out documents to City and Contractor. **(BSS 12.12)**
18. Coordinate Registered Accessibility Specialist (RAS) inspection for obtaining Certificate of Substantial Compliance (TAS 2012). **(BSS 10.6b)**
19. Conduct Final Completion Observation and Closeout; develop and deliver final report to City staff. **(BSS 12.15)**
20. Walk through the project with Contractor and City staff approximately 11 months after the date of Final Completion, to review relevant warranty issues within the contract scope to be corrected by the Contractor. **(BSS 12.13)**

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FEE PROPOSAL

Based on the proposed Basic Scope of Services and Project Specific Scope of Services (Exhibit "1") and general program as currently understood, we propose the following lump sum fees:

I. METHODOLOGY

a. Fee Components–

This Fee Proposal includes a mix of components comprising a total fee to include Basic Services, Supplemental Services, and Additional Services.

1. **Basic Services** includes those disciplines typically required for development of plans and construction documents for most architectural design projects. These services also include requested consulting and public engagement tasks required for this specific project. These include:
 - a. Stakeholder & Public Engagement
 - b. General Consulting Services
 - Market Analysis
 - Financial Analysis
 - c. Planning
 - d. Architectural Design
 - e. Landscape Architectural Design Elements
 - Planting
 - Hardscape
 - Irrigation
 - Wayfinding/Educational Sign layout and details
 - f. Civil Engineering Design
 - g. Structural Engineering Design
 - h. MEP Engineering Design

Any services not listed above or changes to the Scope of Services will be treated as Additional or Supplemental Services.

2. **Supplemental Services** include certain project requirements potentially necessary for the fulfillment of the Basic Services, but which are treated separately from Basic Services due to unknown need, quantities, timing, scope, and/or cost which are indeterminable at the outset of the project until several preliminary design matters are determined.

Such requirements will be determined collaboratively between the City and Burditt throughout the project duration. Any of these services which the City determines should be addressed as Supplemental Services by Burditt will be followed by formal proposals from subconsultants to be approved by the City with costs reimbursed to Burditt plus applicable administrative markup fees.

A separate time and materials budget is established in Section II.C of this Fee proposal as a limit for which any required and approved Supplemental Services will draw down from that limit. No Supplemental Service shall be secured without approval by the City of a subconsultant proposal.

For this project, the potential supplemental project requirements are anticipated to include:

a. BSS 4.0 Environmental Services

- 1) Wetland delineation and other USACE Section 404 requirements (as required)
- 2) United States Fish and Wildlife (USFW) studies or investigations
- 3) Environmental Site Assessment (as required)
- 4) Archaeological Investigation and Permitting (as required)

b. BSS 5.0 Surveying Services

- 1) Surveying by a licensed surveyor (metes & bounds, easements, utilities, existing improvements, trees required by ordinance, topography, etc.)

c. BSS 6.0 Geotechnical Engineering Services

- 1) Geotechnical engineering report with soils boring.

d. BSS 7.0 Drainage Design Services

- 1) Drainage/Hydrology Studies (as required)

e. BSS 8.0 Stormwater Management Plan

3. **Additional Services** include, but are not limited to, any changes due to revisions in the base data relating to this matter, additional design changes following approval by the City, and any other services requested by the City or previously not contemplated in the services defined under Basic or Supplemental Services.

Substantive changes or increases to the Project Scope and Program beyond those identified in Project Understanding and Scope of Basic Services may be considered Additional Services and require mutually agreed upon fee adjustments.

Additional services will be undertaken only with prior written authorization from the City. No Additional Services are anticipated for this project at this time.

b. Fee Determination & Invoicing

1. **Basic Services** will be conducted on a lump sum, fixed fee basis. Invoicing will be conducted monthly as a percentage of work complete for each of the Phase tasks.
2. **Supplemental Services** will be conducted on a cost-incurred basis determined by the actual cost of selected subconsultants for specific work mutually decided between Consultant and the City. Invoicing will be conducted monthly as the Consultant receives billing from subconsultants and shall include the cost of the

work plus an administrative markup fee of 10%. Copies of subconsultant invoices shall be provided to the City with Consultant’s invoice.

3. **Additional Services**, as required, will be conducted on a time and materials basis per Consultant’s Hourly Rate Sheet below. Invoicing will be conducted monthly contemplating any time and costs incurred by the Consultant for the previous month. Any materials costs or expenses relevant to Additional Services will include a 10% administrative markup.
4. **Reimbursable Expenses**, including the cost of travel, print production, and all other necessary costs will not be charged to the City and are already assumed within the Basic Services Fee.

II. FEES:

Total Fee – Maximum Total Fees for Basic and Supplemental Services in all phases shall not exceed \$1,915,050 unless total approved project costs exceed the City’s initial proposed project budget of \$15 million.

Design fees for Phase II and III depicted in the fee schedule below represent **maximum** fees to not exceed for a maximum project budget of \$15 million. If the approved design budget after Phase I is less than \$15 million, the Consultant will re-calculate levels of effort for Phase II based on the City’s approved cost estimate and adjust fees accordingly subject to approval by the City.

Likewise, at the end of Phase II, the Consultant will recalculate levels of effort for Phase III based on the City’s approved cost estimate and adjust fees accordingly subject to approval by the City.

The Consultant will pay for appropriate subconsultant disciplines for Basic Services from the fee amounts paid by the City. Only Supplemental Services will be addressed separately and in conjunction with approval by the City.

A. Basic Services Fee -

Fixed Fee / Lump Sum amounts are billed according to the percentage of completion of each phase task as depicted below. The following fee schedule is provided based upon the current program requirements:

1. Phase I - Pre-Design :

a. Stakeholder & Public Engagement	\$35,000
b. Market Analysis	\$30,000
c. Master Plan Programming	\$25,000
d. Master Plan Concepts	\$35,000
e. General Operating Performance Analysis	\$15,000
f. Capital Cost Estimate	\$3,000
g. Master Plan Report	<u>\$7,000</u>
Total Phase I Fee	\$150,000.00

2. Phase II – Preliminary Design (Fees below are maximum, not to exceed amounts. Actual fee will be calculated based on City’s approved cost estimate at the end of Phase I)

a. Schematic Design	\$204,100
b. SD Cost Estimate	\$24,250
c. SD Deliverables	<u>\$79,675</u>
Total Maximum Phase II Fee	\$308,025.00

Requires City approval prior to activation of the Phase and recalculation of levels of effort for the City-approved Cost Estimate.

3. Phase III – Final Design (Fees below are maximum, not to exceed amounts. Actual fee will be calculated based on City’s approved cost estimate at the end of Phase II)

a. Design Development	\$406,500
b. Construction Documents	\$542,550
c. Bidding Support	\$35,275
d. Construction Administration	<u>\$253,700</u>
Total Maximum Phase III Fee	\$1,238,025.00

Requires City approval prior to activation of the Phase and recalculation of levels of effort for the City-approved Cost Estimate.

B. Supplemental Services Fee Budget –

- A budget to not exceed **\$220,000** is established for any Supplemental Services approved by the City
- Any anticipated Supplemental Services will be discussed with the City and followed by a scope and cost proposal from the proposed subconsultant. This proposal will be submitted to the City for approval prior to engaging the subconsultant.
- No Supplemental Service cost will be invoiced to the City without prior approval for engagement of the subconsultant
- Billed monthly on an actual cost incurred basis plus 10% administrative markup

The following individual Supplemental Services amounts are scheduled to not exceed the costs in the following budget (includes 10% markup costs):

1. BSS 4.0 Environmental Services	\$60,000
2. BSS 5.0 Surveying Services	\$60,000
3. BSS 6.0 Geotechnical Services	\$45,000
4. BSS 7.0 Drainage Design Services	\$35,000
5. BSS 8.0 Stormwater Management Plan	<u>\$20,000</u>
Total Supplemental Svcs Budget	\$220,000

C. Additional Services Fee -

- Time and Materials basis plus 10% administrative markup
- No Additional Services are anticipated

BURDITT CONSULTANTS, LLC 2021 HOURLY RATES

HOURLY RATES APPLY ONLY TO ADDITIONAL SERVICES OR FOR REQUESTS MADE OUTSIDE OF BASIC SERVICES. Professional Services requested and approved by Client shall be provided at the following rates:

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$200
Program Manager	\$180
Project Manager	\$165
Project Architect/Landscape Architect	\$145
Senior Planner	\$145
Wetland Scientist	\$145
Senior Urban Forester	\$145
Natural Resource Planner	\$135
Licensed Irrigator	\$135
Geographic Information Systems (GIS) Planner	\$130
Planning Associate	\$130
Architecture/Landscape Architecture Associate	\$110
Natural Resource/Forester Associate	\$110
CAD Designer II	\$ 90
CAD Designer I	\$ 80
Administrative Assistant II	\$ 70
Administrative Assistant I	\$ 55

Invoices are prepared monthly with payments due 30 days from receipt. Interest at the rate of 1.5 % per month will be charged on all accounts not paid by the 30th day following the billing date. Necessary sub- consultants not currently required by project authorized and approved by Client shall be invoiced at cost plus ten percent (10%).

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Qtr 3, 2021		Qtr 4, 2021			Qtr 1, 2022			Qtr 2, 2022			Qtr 3, 2022			Qtr 4, 2022			Qtr 1, 2023			Qtr 2, 2023			Qtr 3, 2023			Qtr 4, 2023			Qtr 1,
							Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1		Phase I - Pre-Design	110 days	Mon 8/2/21	Fri 12/31/21																															
2		1a - Stakeholder & Public	8 wks	Mon 8/2/21	Fri 9/24/21																															
3		1b - Market Analys	4 wks	Mon 8/2/21	Fri 8/27/21																															
4		1c - Master Plan Programming	2 wks	Mon 8/2/21	Fri 8/13/21																															
5		1d - Master Plan Concepts	6 wks	Mon 9/27/21	Fri 11/5/21	2,3,4																														
6		1e - Operating Analysis	6 wks	Mon 11/8/21	Fri 12/17/21	5																														
7		1f - Capital Cost Estimate (OPC)	1 wk	Mon 11/8/21	Fri 11/12/21	5																														
8		1g - Master Plan Report	2 wks	Mon 12/20/21	Fri 12/31/21	5,6,7																														
9		Phase II - Preliminary	60 days	Mon 1/3/22	Fri 3/25/22																															
10		2a - Schematic Design	10 wks	Mon 1/3/22	Fri 3/11/22	8																														
11		2b - SD Capital Cost Estimate	2 wks	Mon 3/14/22	Fri 3/25/22	10																														
12		2c - SD Deliverat	6 wks	Mon 2/14/22	Fri 3/25/22	10FF,11FF																														
13		Phase III - Final Design	460 days	Mon 3/28/22	Fri 12/29/23																															
14		3a - Design Development	14 wks	Mon 3/28/22	Fri 7/1/22	12																														
15		3b - Construction	18 wks	Mon 7/4/22	Fri 11/4/22	14																														
16		3c - Bidding & Award	8 wks	Mon 11/7/22	Fri 12/30/22	15																														
17		3d - Construction	52 wks	Mon 1/2/23	Fri 12/29/23	16																														

Project: Project Schedule 07082 Date: Fri 7/9/21	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			