

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
2020 Parks Bond Program**

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 Vanir Construction Management, Inc. (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

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

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

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

**II. TERM**

2.1 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 five hundred forty thousand eight hundred and seventy-five dollars (\$540,875.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 2.

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: Vanir Construction Management, Inc.  
Attn: Steve Whitehead, PE  
President  
4540 Duckhorn Drive, Suite 300  
Sacramento, CA 95834

## **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 2020 Parks Bond Program 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 (Public) Liability to include Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate coverage for: Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
<b>Contractual Liability</b>		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 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, 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, 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, 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, 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: Jones & Carter, Inc.; Terracon; P.E. Structural Consultants, Inc.; Design Workshop; and Dianna Tinkler. 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 2270.002) 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**

**CONSULTANT**  
*Vanir Construction Management, Inc.*

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

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

Printed Name: Sereniah Breland

Printed Name: Steve Whitehead

Title: City Manager

Title: President

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

Date: March 31, 2021

APPROVED AS TO FORM:

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

**EXHIBIT 1**  
**CITY OF PFLUGERVILLE**  
**General Consultant for Program Management Services**  
**Associated with the 2020 General Obligation Bond Parks Projects**  
**SCOPE OF SERVICES**

**Program Description / Background:**

On November 3, 2020 the City of Pflugerville held a municipal bond election with three (3) propositions on the ballot. The second Proposition (Prop B) included issuance of \$42,300,000 bonds by the City of Pflugerville, Texas, for parks and recreation projects for trail improvements, neighborhood parks, land acquisition, Lake Pflugerville, 1849 Park, and destination play space.

The City has retained Vanir Construction Management, Inc. to provide General Consultant Program Management services to support management and implementation of the City's Parks Program in the areas of planning, design, construction administration services and may involve operations and maintenance analysis as needed of the various capital improvements. The program will be completed within a five-year period.

This scope and associated fee will be for the initial term of the program including the remainder of FY 21 and FY 22. The scope of work will necessarily vary from project to project but may include elements of various disciplines. The initial scope will be for completion of the current fiscal year with a focus on the next 18-month development window. Services for FY23, FY24 and FY25 will be addressed via separate amendments. Program and Project management services will include preparing Request for Qualifications (RFQ) for selection of design consultants and other third-party professional services. Project Management Services will also include management of the procurement of construction contracts. A preliminary schedule has been developed and included as **Attachment 1 Preliminary Schedule** to the scope of services. This schedule will be finalized as part of the initial program management phase of services. The initial 18 months will focus on the following priority projects (this is subject to change based upon the direction from the City and approval by City Council) as detailed below:

1. An RFQ for selection of a pool of multiple architectural/engineering design consultants will be issued in the first 30 days of the program. Up to 7 design consultants will be selected to perform Plans, Specifications, and Estimate (PS&E) design services for the following projects:
  - a. Trail Improvements
  - b. Neighborhood Parks
  - c. 1849 Park Phase 2 Development

## Article I

Basic Services: The Vanir team will collaborate with the CIP Engineering Parks Development Manager and Parks Department with focus on early priority projects to engage with design activities as quickly as possible with the goal to commence construction activities in year one of the program. The following outlines the expected services for the program and project management activities including deliverables:

### **A. Program Management:**

Program Management services include overall management of the program; planning and pre-design activities; project controls including schedule / cost / scope / document management and status reporting; and / community engagement. Specific activities and tasks include the following:

1. Conduct kick-off session with City and Parks Department
  - a. Establish Objectives, Success Criteria and Key Performance Indicators (KPIs) for the Parks Bond Program
  - b. Conduct planning and pre-design session focused on review of Parks Bond Program plan, individual park developments and priorities
    - i. Identify any changes in the plan and sequence of project activities
2. Develop Program Management Plan (PMP). The PMP is the roadmap for the program and includes all procedures, plans and documents associated with management of the program and individual projects. Key elements and tasks include:
  - a. Baseline Program Scopes and Budgets including all hard and soft costs (Individual Project "Scope to Budget")
    - i. Risk identification and mitigation: elimination or control
    - ii. Identify any deviations from the traditional design-bid-build delivery method
    - iii. Identify any land acquisition and right of way requirements
    - iv. Identify any third-party professional services requirements
  - b. Baseline Program / Project Schedules
    - i. Review preliminary schedule
    - ii. Identify Priorities / Projects
    - iii. Include milestones / critical events
    - iv. Incorporate feedback and finalize initial 18-month program and project schedule.
  - c. Baseline Program Cashflow aligned with the City's expectations and constraints

- d. Communications Plan (Internal and External)
    - i. Internal: Reporting, decision making, workflows, etc.
    - ii. External: Community engagement on projects, status, and updates
  - e. Review and implement City of Pflugerville standard management procedures augmented with Vanir best practice recommendations upon review and acceptance by the City:
    - i. Management Procedures
    - ii. Safety Program Requirements
    - iii. Quality Program
    - iv. Project Management System
    - v. Document Control / Records Retention Protocols and Procedures
    - vi. City standards and design / material criteria are incorporated
3. Project Controls includes the management of time, cost, scope, and documents as well as program and project status reporting:
- a. Schedule Management: Prepare, maintain, and update the program master schedule to include all the major activities leading to fully operational facilities.
    - i. Identify any factors likely to affect schedule
    - ii. Evaluate and recommend alternatives
  - b. Cost Management: Prepare, maintain, and update the program and project budgets that include all soft and hard cost associated with completion of the projects.
    - i. Identify factors likely to affect cost
    - ii. Evaluate and recommend alternatives where applicable
  - c. Scope Management: Track project scope / designs are in conformance with program requirements and Parks Department standards.
  - d. Document Management: Implement a document management and records retention plan in conformance with City standards and requirements.
    - i. Maintain hard and electronic copies necessary
    - ii. Utilize City approved filing structure
    - iii. Utilize City approved electronic system. Unless otherwise specified by City, Vanir will utilize standard Microsoft products – such as Microsoft Teams, Projects, and SharePoint
  - e. Program Reporting: Establish and implement regular program status reports. Reports will include the following minimum information:
    - i. Program Budget and Schedule Status Information
    - ii. Any changes in budget or schedule from baseline
    - iii. Current Activities



- iv. Open Actions
- v. Risk / Issues

4. Vanir will support community, stakeholder, and public engagement for the seven (7) parks projects which will generally consist of a series of workshops to vet community vision, goals, and expectations for the projects. Vanir shall provide professional services as follows:

- a. Prepare and provide information to the City's PIO as determined for overall Park Program and as needed regarding public information meeting planning and facilitation. It is assumed that any required public meetings would be virtual. If public meetings are held in-person and require attendance by Vanir this will be authorized as an additional service if approved in advance by the City.
- b. Coordinate with City's PIO and develop information to be provided on the City's website for status updates of the Park Bond Program. Updates may be monthly, quarterly, and/or as needed for release of information to the media.
- c. Identify projects for ground-breaking and ribbon cutting events. Coordinate with the City's PIO for final determination of events. Prepare materials and information as needed for identified events.
- d. Prepare required information as requested by the City's PIO for use by the City social media.
- e. Prepare required information as requested by the City's PIO for use by the City for media relations support.
- f. Prepare analytical information as requested by the City's PIO for monthly, quarterly and annual reporting.

5. Deliverables:

- a. Program Management Plan
- b. Baseline Project Scopes
- c. Baseline Program and Individual Project Budgets
- d. Baseline Program and Project Schedule
- e. Responsibility Matrix
- f. Decision Making Workflow / Matrix of Authority
- g. Community Engagement Strategy and Plan
  - i. Public Meeting summary reports

## **B. Project Management:**

Project management includes the management of the activities through the phases of the individual projects' development cycle including pre-design, design, procurement, construction, and close-out. Specific activities for each phase include:

1. **Pre-Design** includes preparation of the project requirements documents and selection of the design professionals through a request for qualifications (RFQ) process.
  - a. Develop design solicitation package, advertise and release for response
  - b. Conduct pre-submission conference and coordinate response to any questions
  - c. Receive and review responses and recommend project design firm awards
  - d. Prepare recommendation for City Council approval and documentation for authorization
  - e. Prepare and issue notice of selection and prepare / process contracts
  - f. Conduct design kick-off meetings
  
2. **Design Phase Management** includes a process of continual review and consultation among members of the Project Team on all issues as the design progresses from fundamental and general discussions, initially, to detailed decisions for each Project. The process will include a value engineering review and a constructability review. The Design Firm has total responsibility for design decisions and execution. Program Manager will carry out the following activities:
  - a. Manage progress of work and coordinate with design team, Parks Department and other internal & external stakeholders:
    - i. Conduct design progress meetings with design teams to review progress of design and compliance with baseline scope, budget, and schedule parameters.
    - ii. Coordinate 3rd party services, such as surveys, environmental evaluations, geotechnical, material testing and or specialty inspections, etc.
    - iii. Coordinate land acquisition and right of way activities
    - iv. Conduct reviews at major design phases (30, 60, 90):
      1. Scope conformance
      2. Estimate Budget verification
      3. Drawing / specification review for constructability, accuracy, and conformance to standards
    - v. Final Construction Document Review
      1. Constructability Review
      2. Budget / Estimate confirmation

**3. Procurement Phase Bid / Negotiation Management** focuses on design document readiness, coordination of bid activities and contractor / subcontractor engagement efforts to maximize bidder participation resulting in cost competitiveness. Upon completion of the design and oversight services provided by Vanir approval of the Final drawings and specifications by the City, Vanir shall provide professional services to be coordinated with the design consultants:

- a. Securing bids by coordinating issuance of Notice to Bidders to prospective contractors and vendors utilizing Civcast or approved City solicitation method. Project bidding registration cost for Civcast will be paid by the City.
  - b. Conducting a pre-bid conference for the construction projects and coordinate responses to contractor questions by the design consultant. Response to the pre-bid conference will be in the form of addenda issued by the design consultant after the conference.
  - c. Review Consultant's tabulating and analyzing of the bids received and evaluating Consultant's recommendation of award for the construction contract in conjunction with preparing for City Council recommendation.
  - d. Vanir will prepare necessary items for City Council award.
  - e. Vanir will prepare notice of award of contract to successful contractor for City signature.
  - f. Vanir will coordinate with the design consultants for furnishing the awarded contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.
- 4. Construction Phase Management** focuses on efforts to expedite and improve the efficiency of the construction process through professional planning and execution of the program and individual project activities affecting scope, cost, time, safety and quality requirements. The construction contractor has total responsibility for construction means, methods, sequence and procedures used in the construction of the projects, and for the safety of its personnel and its operations. The City Construction Management Team will provide inspection services of the constructor work. The Program Managers role will be to coordinate and support the City Construction Management Team. Specific activities include:

- a. Conduct coordination Owner, Architect, Contractor ("OAC") meetings with owner, architect, and construction team approximately twice per month and during critical activities or in response to concerns.
- b. Coordinate and Support City Construction Management Team:

- i. Facilitate communication among team members, owner, architect, and contractor
- ii. Expedite response to any agency's requirements that could impact final completion date and occupancy including all utilities, infrastructure, and inspections
- iii. Monitor and update progress schedules based on feedback from Contractor and Design Consultants
- iv. Review and recommend change orders to City for approval resulting from unforeseen conditions or owner requested scope changes
- v. Review and process contractors' monthly applications for payment
- vi. Assist contractor and architect in obtaining approvals and inspections
- vii. Keep the City informed and provide monthly reports
- viii. Coordinate with third party testing, commissioning, and other specialty contractors
- ix. Assist the City with the procurement and installation of furniture, fixtures, and equipment (FF&E) items
- x. Substantial completion and occupancy coordination with owner
- xi. Final close-out and financial reconciliation

5. Deliverables:

- a. Weekly and Monthly Status Reports
- b. Meeting Minutes
- c. Design Review Documentation
- d. Construction Solicitation Packages

## Article II

### **Additional Services:**

Additional program and project management support activities may be required during the execution of the program. **The following services are included as additional to the basic services detailed previously and will be implemented only upon written authorization by the City:**

Vanir has subcontracted with firms specialized in additional land acquisition and environmental investigation services and offer the following at pre-negotiated rates:

A. Right of Entry and Right of Way Negotiation Services through Dianna L Tinkler. Specific services include:

1. Right of Way Agent for Survey Permission Right of Entry
  - a. Review maps provided by City identifying parcels requiring survey permission right of entry
  - b. Research Travis Central Appraisal District records for owner contact information
  - c. Research Secretary of State records for business owner contact information
  - d. Prepare survey permission right of entry letter for each property owner

- e. Prepare survey permission right of entry form for each property owner's signature
  - f. Contact each property owner to meet and discuss survey permission right of entry, if practical
  - g. Initiate and receive various phone calls throughout survey permission right of entry process
  - h. Provide property owner questions/concerns with Engineer and City to resolve property owner questions/concerns
  - i. Prepare general correspondence to property owner to address concerns, if required
  - j. Provide signed survey permission right of entry forms to City
  - k. If Owner refuses to sign ROE, parcel file will be submitted to City Attorney to secure access through court action
2. Right of Way Negotiator and Project Manager
- a. Contact design engineer via phone or email to provide monthly parcel acquisition updates
  - b. Participate in two (2) project review meetings during engineering design phase
  - c. Participate in two (2) project review meetings as determined by City
  - d. Primary parcel file for acquisitions will be kept in ROW provider's office
  - e. Prepare monthly status report for parcel acquisition as requested by City/Engineer
  - f. Prepare monthly invoices for right of way services provided
  - g. Maintain parcel file including correspondence and negotiator's log with property owner
  - h. Maintain parcel files with original documentation related to the purchase of the real property or property interest.
  - i. Review of parcel sketches prepared by surveyor and approved by the City to confirm that exceptions listed on title commitment are shown on parcel sketches.
  - j. City will require surveyor to update sketches as needed to show encumbrances listed in the title commitment.
  - k. Assist the City with obtaining title commitment from the title company that will be providing title insurance for acquisition. Cost of title commitment will be paid by City and is not included in this scope of work.
  - l. Assist the City with obtaining title commitment updates as needed. Cost of title commitments will be paid by City and is not included in this scope of work or fee schedule.
  - m. Upon receipt of approved field note descriptions from the City, prepare letter of intent to acquire to property owner and provide landowner's bill of rights and Information About Brokerage Services by Certified Mail-Return Receipt Requested (CMRRR)
  - n. Analyze preliminary title report to determine potential title problems and propose methods to cure title deficiencies
  - o. City will provide written approval of appraised values before written offers are made to landowners
  - p. Prepare initial offer letter, purchase contract, instrument of conveyance

- q. Written offer, purchase contract, instrument of conveyance, appraisal report and Landowner's Bill of Rights mailed to property owner by CMRRR
- r. Contact each property owner to meet and discuss the written offer, if practical
- s. Initiate and receive various phone calls throughout initial offer
- t. Prepare general correspondence to property owner
- u. Provide property owner questions/concerns with Engineer and City to resolve property owner questions/concerns
- v. Attend maximum of three (3) meetings with property owner during initial offer phase
- w. Submit any written counteroffer from property owner to City including supporting documentation, and recommendation with regard to counteroffer
- x. Secure necessary signed instruments upon acceptance of the offer by property owner and the tenant for the closing
- y. Provide purchase contract executed by the property owner to City for City's execution
- z. Provide fully executed purchase contract to title company to prepare closing documents
  - aa. Assist the title company in the curative work necessary to provide clear title to City, including partial releases of liens
  - bb. All bank processing fees for lender consents, partial release of lien requests are paid by the City and are not included in this scope of work or fee schedule.
  - cc. Prepare check request to City for acquisition and closing costs including but not limited to document preparation fee for lender partial release of lien, lender's processing fee for partial release requests, recording fees, escrow fees, and any other applicable closing costs with supporting documentation provided by title company and all fees are paid by the City
  - dd. Attend closing with property owner to provide support to title company and City
  - ee. Record original instruments immediately after closing at the County Clerk's Office. Recording fees are included in closing costs and are paid by City.
  - ff. All closing costs are paid by City and are not included in this scope of work or fee schedule.
  - gg. Assist the City with obtaining title insurance for parcels acquired, insuring acceptable title to City.
  - hh. Cost of title insurance to be paid by City.
  - ii. Prepare final offer letter, documents of conveyance as necessary and mail by CMRRR
  - jj. Attend one (1) meeting with property owner after final offer letter in an attempt to reach agreement in lieu of condemnation
  - kk. Assist the City with securing a Possession and Use Agreement if acceptable with property owner
  - ll. Copy and compare files for City law department
  - mm. Deliver file to City of Pflugerville: 1) Closed file, 2) Condemnation file

B. Environmental, Geotechnical, Cultural, Historical investigation and studies through Terracon:

## 1. Cultural Resources Desktop Report

- a. Cultural Resources specialists with Terracon will perform a desktop analysis of a project area with emphasis on the Archeological (Restricted) Sites Atlas (database) maintained by the Texas Historical Commission (THC) and the Texas Archeological Research Laboratory (TARL). Other databases will also be reviewed along with historical maps and aerial imagery. The effort will identify previously recorded archeological and historical resources, as well as previous cultural resource investigations, within a 0.5-mile radius of a project area. Mapped soil types, topography, and bedrock geology within a project area will be examined; these can be an indicator of probability for shallow and/or deeply buried archaeological resources. Results of the desktop reviews will be compiled in a short report that will be coordinated with the client, the City, and the THC. Depending on the results of the desktop review and the requirements of the reviewing agency, further work may be necessary.

## 2. Stage 1 GeoReport

- a. Terracon's Stage1 GeoReport combines Terracon's extensive subsurface data, collected over more than 50 years, with public domain information. Our local, experienced geotechnical engineers use their understanding of the area, in combination with predictive analysis and Terracon's historical data, to provide an opinion of 1) expected subsurface site conditions; 2) design and construction considerations; 3) a plan to confirm expectations. This unique subsurface characterization process streamlines site selection, aids in preliminary design, and provides a strategic field exploration plan. You receive a conceptual geotechnical model of your project's subsurface conditions, ultimately saving you time and money, before geotechnical field exploration takes place. Benefits of Stage1:
  - i. Fast: A two-hour turnaround for initial data, and three days for the delivery of your Stage1 report. The site is and access the finished reports from our online platform.
  - ii. Scalable: Stage1 is dynamic. Small sites, large sites, and linear projects are easily processed through our dedicated team of Stage1 professionals.

## 3. Geotechnical Engineering Report

- a. Terracon performs a series of borings within/alongside the proposed project boundaries. The layout of the borings will be approximated based on project plans. Boring depths are determined by our knowledge of subsurface conditions in the area of the project. Sample of the subsurface soils/rock are obtained and tested in our AASHTO accredited laboratory to determine physical engineering characteristics. Testing will be performed under the direction of a geotechnical engineer and may include visual classification, moisture content, dry density, Atterberg limit, grain size analyses, absorption pressure swell tests, strength tests (such as unconfined compression and/or calibrated penetrometer) and soluble sulfate content tests, as appropriate. The results of our field and laboratory

programs are evaluated by a professional geotechnical engineer licensed in the State of Texas. Based on the results of our evaluation, an engineering report will be prepared that details the results of the testing performed, provides logs of the borings, and a diagram of the site/boring layout.

#### 4. Phase 1 Environmental Site Assessments

- a. Phase I ESAs are conducted by Terracon's Environmental Professionals in accordance with method ASTM E 1527-13, are generally comprised of three main parts:
  - i. Historical review of the site including current/historical aerial photographs (usually back several decades), City Directories (to evaluate who had ever occupied the site), Sanborn Fire Insurance Maps (frequently used for older properties to evaluate what buildings were constructed of and what potential ignition sources may have been present, such as underground storage tanks), interviews with persons knowledgeable of the site, and potentially other research sources (such as old telephone directories, historical society records, etc.)
  - ii. Review of regulatory agency databases for listings of registered underground fuel storage tanks, dry cleaners, landfills, waste management facilities, etc.
  - iii. A site visit to observe any evidence of items of environmental concern on or adjacent to the site. All of this information is summarized in a report which evaluates the potential for Recognized Environmental Conditions.

#### 5. Limited Subsurface Investigation

- a. Limited Subsurface Investigations are generally conducted if the Phase I ESA identifies any Recognized Environmental Conditions, and may include soil sampling and analysis, installation of groundwater monitoring wells for sampling and analysis of groundwater and vapor sampling. If any exceedances of regulatory limits of chemical of concern are identified, Terracon can help evaluate the need for additional investigations and remediation/closure options.

#### 6. Waters of the US / Wetlands Report (WOTUS)

- a. WOTUS Assessments assists will be performed by Terracon's Environmental Scientists in compliance with Section 404 and Section 10 regulating the discharge of fill materials in WOTUS during possible future construction activities within the study area. This is achieved through desktop efforts examining data publicly available related to waters and wetlands, performing a site investigation to identify, and delineate the boundary of all aquatic resources in the study area with the potential to be regulated as WOTUS, including wetlands. Wetland identification and delineation follow the guidance in the US Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual, the USACE Great Plains regional supplement, and applicable Regulatory Guidance Letters. Results from the desktop effort and field investigation will be prepared in a document



presenting a professional opinion regarding the likelihood for the identified aquatic resources to be considered jurisdictional and regulated by the USACE. Depending on the project impacts to WOTUS, Terracon will assist in understanding whether a USACE permit may be necessary for a project.

### Article III

**TIME OF COMPLETION:** Vanir is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the schedule presented in Attachment 1. If Vanir's services are delayed through no fault of Vanir, Vanir shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to Vanir, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Exhibit B.

**EXHIBIT 2**  
**CITY OF PFLUGERVILLE**  
**General Consultant for Program Management Services**  
**Associated with the 2020 General Obligation Bond Parks Projects**  
**Compensation Schedule**

**Compensation Description:**

Vanir will provide the services detailed in Exhibit 1 – Scope of Services, for the 2020 Parks Bond Program based upon a unit hourly rate not-to-exceed basis per **Attachment 2 Fee Schedule**.

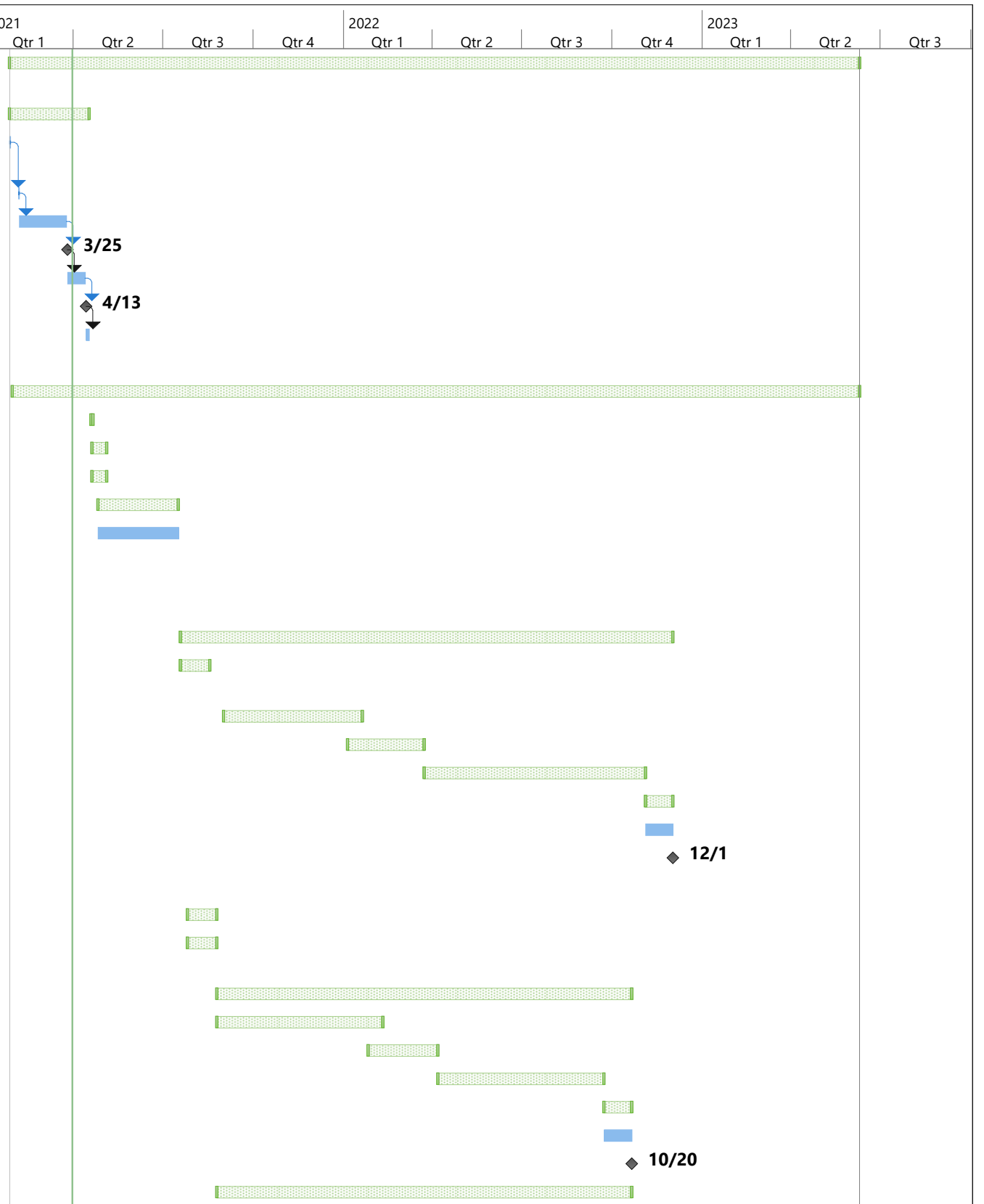
- The Attachment 2 Fee Schedule details our not to exceed hourly estimate for the initial 18-months of the program for labor. The fee table represents an allocation of labor based upon the anticipated scope. This is the maximum amount of labor agreed to for performance during the 18-month services period without an additional amendment and written approval.
- Invoices will be submitted monthly based upon actual hours and services performed.
- Rates and estimates for additional services for right-of-way services or environmental services per Article II of Exhibit 1 are included as **Attachment 3 Additional Services Estimate**.
- Any additional services will be provided after written authorization per the following Rate Table.
- Reimbursable expenses will be invoiced at cost with-out mark-up. Any single expense exceeding \$100 shall require pre-authorization by the City. Reimbursable expenses include mileage (at the standard IRS rate), printing and reproduction, travel, transportation, and subsistence away from the Vanir office.

Rate Table

Firm	Position	Rate
Vanir	Principal in Charge	\$ 225.00
	Program Manager	\$ 155.00
	Project /Construction Manager	\$ 145.00
	Assistant Project / Construction Manager	\$ 110.00
	Program Controls Manager	\$ 150.00
	Estimating, Scheduling & Constructability	\$ 155.00
Jones & Carter	Practice Leader	\$ 260.00
	Planning & Design Manager	\$ 240.00
	Design Engineer II	\$ 130.00
	Design Engineer I	\$ 110.00
	Senior Project Manager	\$ 240.00
	Admin Support	\$ 80.00
	Professional Engineer V	\$ 240.00
	Professional Engineer IV	\$ 225.00
	Professional Engineer III	\$ 195.00
	Professional Engineer II	\$ 170.00
	Professional Engineer I	\$ 150.00
Design Workshop	Principal	\$ 200.00
	Project Manager	\$ 130.00
	Project Landscape Architect	\$ 100.00
	Project Assistant	\$ 100.00
PE Structural	Structural Engineering Review	\$ 190.00
Dianna Tinkler	ROW Project Manager	\$ 150.00
	Right of Way Agent Services	\$ 1,200.00
	Right of Way Negotiations	\$ 120.00
	Appraisal Services \$3,800 - \$5,000	\$ 5,000.00
Terracon	Cultural Resources Desktop Report	\$ 2,500.00
	Stage 1 Geo Report	\$ 950.00
	Geotechnical Engineering Report (varies)	\$ 8,000.00
	Phase 1 ESA	\$ 3,000.00
	Limited Subsurface Investigation (varies)	\$ 15,000.00
	Waters of the US / Wetlands Report	\$ 3,500.00

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ID	Task Mode	Task Name	Duration	Start	Finish	2021				2022				2023				
						Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	
1		<b>PRELIMINARY - City of Pflugerville 2020 Bond Parks Projects Master Schedule- Attachment 1</b>	<b>619 days?</b>	<b>Tue 1/26/21</b>	<b>Fri 6/9/23</b>													
2		<b>GC Contracting</b>	<b>59 days</b>	<b>Tue 1/26/21</b>	<b>Fri 4/16/21</b>													
3	✓	City Council Approves GC Selection; Scope/Fee negotiation commences	1 day	Tue 1/26/21	Tue 1/26/21													
4	✓	Scope of Work Meeting	1 day	Thu 2/4/21	Thu 2/4/21													
5		Scope and Fee Refinement	34 days	Fri 2/5/21	Wed 3/24/21													
6		Submit Final Fee Proposal for Approval	1 day	Thu 3/25/21	Thu 3/25/21													
7		City Staff Review and Prepares Agenda Item	12 days	Fri 3/26/21	Mon 4/12/21													
8		City Council Meeting Considers Approval	1 day	Tue 4/13/21	Tue 4/13/21													
9		City issues GC NTP	3 days	Wed 4/14/21	Fri 4/16/21													
10																		
11		<b>2020 Bond Parks Bond Program</b>	<b>616 days?</b>	<b>Fri 1/29/21</b>	<b>Fri 6/9/23</b>													
12		<b>Project Management Kick off / Initiation</b>	<b>2 days</b>	<b>Mon 4/19/21</b>	<b>Tue 4/20/21</b>													
15		<b>PMP Development (includes Staff Review and Approvals)</b>	<b>11 days</b>	<b>Tue 4/20/21</b>	<b>Tue 5/4/21</b>													
25		<b>Program Implementation</b>	<b>11 days</b>	<b>Tue 4/20/21</b>	<b>Tue 5/4/21</b>													
31		<b>A/E Procurement (Proposed A/E Pool)</b>	<b>60 days</b>	<b>Mon 4/26/21</b>	<b>Fri 7/16/21</b>													
32		Solicit A/Es - Review City RFQ and finalize for solicitation, Evaluate Responses, Recommend, Assist City with Fee Structure Negotiations, and Award	3 mons	Mon 4/26/21	Fri 7/16/21													
33																		
34		<b>City Wide Trail Improvements</b>	<b>359 days?</b>	<b>Mon 7/19/21</b>	<b>Thu 12/1/22</b>													
35		<b>Project Startup / Pre-Design (Facilitate A/E Fee negotiations and assist City with issuing A/E NTPs)</b>	<b>22 days</b>	<b>Mon 7/19/21</b>	<b>Tue 8/17/21</b>													
44		<b>Design Phase &amp; Permitting</b>	<b>101 days</b>	<b>Wed 9/1/21</b>	<b>Wed 1/19/22</b>													
53		<b>Contractor Solicitation / Procurement</b>	<b>56 days?</b>	<b>Wed 1/5/22</b>	<b>Wed 3/23/22</b>													
63		<b>Construction Phase</b>	<b>161 days</b>	<b>Thu 3/24/22</b>	<b>Thu 11/3/22</b>													
67		<b>Occupancy</b>	<b>20 days</b>	<b>Fri 11/4/22</b>	<b>Thu 12/1/22</b>													
68		Occupancy	1 mon	Fri 11/4/22	Thu 12/1/22													
69		Final Completion (Close-out and financial reconciliation)	1 mon	Fri 11/4/22	Thu 12/1/22													
70																		
71		<b>Neighborhood Parks</b>	<b>22 days</b>	<b>Mon 7/26/21</b>	<b>Tue 8/24/21</b>													
72		<b>Project Startup / Pre-Design (Facilitate A/E Fee negotiations and assist City with issuing A/E NTPs)</b>	<b>22 days</b>	<b>Mon 7/26/21</b>	<b>Tue 8/24/21</b>													
81		<b>Mallard</b>	<b>302 days?</b>	<b>Wed 8/25/21</b>	<b>Thu 10/20/22</b>													
82		<b>Design Phase &amp; Permitting</b>	<b>121 days?</b>	<b>Wed 8/25/21</b>	<b>Wed 2/9/22</b>													
91		<b>Contractor Solicitation / Procurement</b>	<b>51 days</b>	<b>Wed 1/26/22</b>	<b>Wed 4/6/22</b>													
101		<b>Construction Phase</b>	<b>121 days?</b>	<b>Thu 4/7/22</b>	<b>Thu 9/22/22</b>													
105		<b>Occupancy</b>	<b>20 days</b>	<b>Fri 9/23/22</b>	<b>Thu 10/20/22</b>													
106		Occupancy	1 mon	Fri 9/23/22	Thu 10/20/22													
107		Final Completion	1 mon	Fri 9/23/22	Thu 10/20/22													
108		<b>Pecan</b>	<b>302 days?</b>	<b>Wed 8/25/21</b>	<b>Thu 10/20/22</b>													



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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			

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ID	Task Mode	Task Name	Duration	Start	Finish	2021				2022				2023				
						Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	
109	➔	<b>Design Phase &amp; Permitting</b>	121 days?	Wed 8/25/21	Wed 2/9/22													
118	➔	<b>Contractor Solicitation / Procurement</b>	61 days	Wed 1/12/22	Wed 4/6/22													
128	➔	<b>Construction Phase</b>	121 days?	Thu 4/7/22	Thu 9/22/22													
132	➔	<b>Occupancy</b>	20 days	Fri 9/23/22	Thu 10/20/22													
133	➔	Occupancy	1 mon	Fri 9/23/22	Thu 10/20/22													
134	➔	Final Completion (Close-out and financial reconciliation)	1 mon	Fri 9/23/22	Thu 10/20/22													
135	➔	<b>Kelly Ln</b>	362 days?	Wed 8/25/21	Thu 1/12/23													
136	➔	<b>Design Phase &amp; Permitting</b>	121 days?	Wed 8/25/21	Wed 2/9/22													
145	➔	<b>Contractor Solicitation / Procurement</b>	61 days	Wed 1/12/22	Wed 4/6/22													
155	➔	<b>Construction Phase</b>	181 days?	Thu 4/7/22	Thu 12/15/22													
159	➔	<b>Occupancy</b>	20 days	Fri 12/16/22	Thu 1/12/23													
160	➔	Occupancy	1 mon	Fri 12/16/22	Thu 1/12/23													
161	➔	Final Completion (Close-out and financial reconciliation)	1 mon	Fri 12/16/22	Thu 1/12/23													
162	➔	<b>Picadilly</b>	302 days?	Wed 8/25/21	Thu 10/20/22													
163	➔	<b>Design Phase &amp; Permitting</b>	121 days?	Wed 8/25/21	Wed 2/9/22													
172	➔	<b>Contractor Solicitation / Procurement</b>	61 days	Wed 1/12/22	Wed 4/6/22													
182	➔	<b>Construction Phase</b>	121 days	Thu 4/7/22	Thu 9/22/22													
186	➔	<b>Occupancy</b>	20 days	Fri 9/23/22	Thu 10/20/22													
187	➔	Occupancy	1 mon	Fri 9/23/22	Thu 10/20/22													
188	➔	Final Completion (Close-out and financial reconciliation)	1 mon	Fri 9/23/22	Thu 10/20/22													
189	➔	<b>Wilbarger Phase 2</b>	422 days	Wed 8/25/21	Thu 4/6/23													
190	➔	<b>Design Phase &amp; Permitting</b>	121 days	Wed 8/25/21	Wed 2/9/22													
199	➔	<b>Contractor Solicitation / Procurement</b>	61 days	Wed 1/12/22	Wed 4/6/22													
209	➔	<b>Construction Phase</b>	241 days	Thu 4/7/22	Thu 3/9/23													
213	➔	<b>Occupancy</b>	20 days	Fri 3/10/23	Thu 4/6/23													
214	➔	Occupancy	1 mon	Fri 3/10/23	Thu 4/6/23													
215	➔	Final Completion (Close-out and financial reconciliation)	1 mon	Fri 3/10/23	Thu 4/6/23													
216	➔																	
217	➔	<b>1849 Park Phase 2</b>	485 days	Mon 8/2/21	Fri 6/9/23													
218	➔	<b>Project Startup / Pre-Design (Facilitate A/E Fee negotiations and assist City with issuing A/E NTPs)</b>	22 days	Mon 8/2/21	Tue 8/31/21													
227	➔	<b>Design Phase &amp; Permitting</b>	161 days	Wed 9/1/21	Wed 4/13/22													
236	➔	<b>Contractor Solicitation / Procurement</b>	64 days	Mon 3/14/22	Thu 6/9/22													
246	➔	<b>Construction Phase</b>	241 days	Fri 6/10/22	Fri 5/12/23													
250	➔	<b>Occupancy</b>	20 days	Mon 5/15/23	Fri 6/9/23													
251	➔	Occupancy	1 mon	Mon 5/15/23	Fri 6/9/23													
252	➔	Final Completion (Close-out and financial reconciliation)	1 mon	Mon 5/15/23	Fri 6/9/23													
253	➔																	
254	➤	Lake Pflugerville Phase 2 - TBD	0 days															
255	➤	Destination play space - TBD	0 days															

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Task		Project Summary		Manual Task		Start-only		Deadline		* Schedule is based on Work Days
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				

Attachment 2 - Basic Services Fee Schedule

Phase	Task Description	Vanir				Jones & Carter					Design Workshop	PE Structural	Total Labor	Total Direct
		Principal in Charge	Program Manager	Program Controls Manager	Estimating, Scheduling & Constructability	Practice Leader	Planning & Design Manager	Design Engineer	Admin Support	Engineering Support / Design Reviews (PE III)	Project Landscape Architect Review	Structural Engineering Review		
		\$ 225.00	\$ 155.00	\$ 150.00	\$ 155.00	\$ 260.00	\$ 240.00	\$ 130.00	\$ 80.00	\$ 195.00	\$ 190.00	\$ 190.00	Hours	Labor Costs
<b>A.</b>	<b>PROGRAM MANAGEMENT</b>													
1.	Conduct kick-off session													
a.	Establish program objectives, success criteria and key performance indicators (KPIs)	8	8	8		8	8						40	\$ 8,240
b.	Conduct detailed review of parks plan, individual park developments and priorities	16	16			16	16						64	\$ 14,080
2.	<b>Program Management Plan and Implementation</b>													
a.	Baseline Program Scopes and Budgets including all hard and soft costs (Individual Project "Scope to Budget")	1	4	8	40	2	4	8					67	\$ 10,765
b.	Baseline Program / Project Schedules		4	8	8								20	\$ 3,060
c.	Baseline Program Cashflow aligned with the city's expectations and constraints	1	4	4									9	\$ 1,445
d.	Communications Plan (Internal and External)	1	4	4					4				13	\$ 1,765
e.	Management Procedures	1	4										5	\$ 845
f.	Safety Program Requirements	1	4										5	\$ 845
g.	Quality Program	1	4			4							9	\$ 1,885
h.	Project Management System	1	4	8									13	\$ 2,045
i.	Document Control / Records Retention Protocols and Procedures	1	4						8				13	\$ 1,485
j.	Review and Ensure City standards and design / material criteria are incorporated		4			2	8	8					22	\$ 4,100
	<b>Program Kick-off and Program Implementation Hours</b>	<b>32</b>	<b>64</b>	<b>40</b>	<b>48</b>	<b>32</b>	<b>36</b>	<b>16</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>280</b>	<b>\$ 50,560</b>
	<b>Labor Costs</b>	<b>\$ 7,200</b>	<b>\$ 9,920</b>	<b>\$ 6,000</b>	<b>\$ 7,440</b>	<b>\$ 8,320</b>	<b>\$ 8,640</b>	<b>\$ 2,080</b>	<b>\$ 960</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 50,560</b>	
3.	<b>Project Controls</b>													
a.	Schedule Management		16	48									64	\$ 9,680
b.	Cost Management		16	48									64	\$ 9,680
c.	Scope Management		16	48									64	\$ 9,680
d.	Document Management		16						144				160	\$ 14,000
e.	Program Reporting		32	96									128	\$ 19,360
	<b>Project Controls Hours</b>	<b>0</b>	<b>96</b>	<b>240</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>144</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>480</b>	<b>\$ 62,400</b>
	<b>Labor Costs</b>	<b>\$ -</b>	<b>\$ 14,880</b>	<b>\$ 36,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,520</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 62,400</b>	
4.	<b>Community, Stakeholder and Public Engagement</b>													
a.	Provide information as requested	12	12	40					40				104	\$ 13,760
<b>B.</b>	<b>PROJECT MANAGEMENT</b>													
1.	<b>Pre-Design Management</b>													
a.	Develop design RFQs, advertise and release for responses		16				16	40	40				112	\$ 14,720
b.	Conduct pre--submission conference and coordinate response to questions		8				8	40					56	\$ 8,360
c.	Receive and review responses and recommend project design firm awards	8	40			8	40						96	\$ 19,680
d.	Prepare recommendation for city council approval and documentation for authorization		8				8		16				32	\$ 4,440
e.	Prepare and issue notice of selection and prepare / process contracts		8						40				48	\$ 4,440
f.	Conduct design kick-off meetings		14				14	14					42	\$ 7,350

Attachment 2 - Basic Services Fee Schedule

Phase	Task Description	Vanir				Jones & Carter					Design Workshop	PE Structural	Total Labor	Total Direct
		Principal in Charge	Program Manager	Program Controls Manager	Estimating, Scheduling & Constructability	Practice Leader	Planning & Design Manager	Design Engineer	Admin Support	Engineering Support / Design Reviews (PE III)	Project Landscape Architect Review	Structural Engineering Review		
<b>2.</b>	<b>Design Phase Management</b>													
<i>a.</i>	<i>Manage progress of work</i>	16	64										80	\$ 13,520
<i>b.</i>	<i>Conduct design progress meetings</i>						80	168					248	\$ 41,040
<i>c.</i>	<i>Coordinate 3rd party services, such as surveys, environmental evaluations, geotechnical, material testing and or specialty inspections, etc.</i>		40										40	\$ 6,200
<i>d.</i>	<i>Coordinate land acquisition and right of way activities</i>		16										16	\$ 2,480
<i>e.</i>	<i>Conduct review at major design phases (TYP 30/60/90)</i>	8	56		56		112			224	224	112	792	\$ 153,560
<i>f.</i>	<i>Final Construction Document Review</i>	8	56		168		56						288	\$ 49,960
<b>3.</b>	<b>Procurement Phase Management</b>													
<i>a.</i>	<i>Securing bids through Civcast</i>		14										14	\$ 2,170
<i>b.</i>	<i>Conduct pre--submission conference and coordinate response to questions</i>		14										14	\$ 2,170
<i>c.</i>	<i>Review bid tabulations and bid analysis</i>		14										14	\$ 2,170
<i>d.</i>	<i>Prepare necessary items for City Council award</i>		7						14				21	\$ 2,205
<i>e.</i>	<i>Prepare notice of award</i>		4						7				11	\$ 1,180
<i>f.</i>	<i>Coordinate design consultant transmission of contract documents</i>						7		14				21	\$ 2,030
<b>4.</b>	<b>Construction Phase Management</b>													
<i>a.</i>	<i>Conduct coordination ("OAC") meetings with owner, architect, and construction team</i>		168										168	\$ 26,040
<i>b.</i>	<i>Coordinate and Support City Construction Management Team</i>	40		120	40	40	40		40	40			360	\$ 64,200
	<b>Project Management Labor Hours</b>	<b>80</b>	<b>547</b>	<b>120</b>	<b>264</b>	<b>48</b>	<b>374</b>	<b>269</b>	<b>171</b>	<b>264</b>	<b>224</b>	<b>112</b>	<b>2473</b>	<b>\$ 427,915</b>
	<b>Labor Costs</b>	<b>\$ 18,000</b>	<b>\$ 84,785</b>	<b>\$ 18,000</b>	<b>\$ 40,920</b>	<b>\$ 12,480</b>	<b>\$ 89,760</b>	<b>\$ 34,970</b>	<b>\$ 13,680</b>	<b>\$ 51,480</b>	<b>\$ 42,560</b>	<b>\$ 21,280</b>	<b>\$ 427,915</b>	
	<b>Total Hours</b>	<b>112</b>	<b>707</b>	<b>400</b>	<b>312</b>	<b>80</b>	<b>410</b>	<b>285</b>	<b>327</b>	<b>264</b>	<b>224</b>	<b>112</b>	<b>3233</b>	
	<b>Total Labor Costs</b>	<b>\$ 25,200</b>	<b>\$ 109,585</b>	<b>\$ 60,000</b>	<b>\$ 48,360</b>	<b>\$ 20,800</b>	<b>\$ 98,400</b>	<b>\$ 37,050</b>	<b>\$ 26,160</b>	<b>\$ 51,480</b>	<b>\$ 42,560</b>	<b>\$ 21,280</b>		<b>\$ 540,875</b>

Attachment 3 - Additional Services Estimate

Phase	Task Description	Dianna Tinkler				Terracon						Total Additional Services
		ROW Project Manager	Right of Way Agent Services	Right of Way Negotiations	Appraisal Services \$3,800 - \$5,000	Cultural Resources Desktop Report	Stage 1 Geo Report	Geotechnical Engineering Report (varies)	Phase 1 ESA	Limited Subsurface Investigation (varies)	Waters of the US / Wetlands Report	
		\$ 150.00	\$ 1,200.00	\$ 120.00	\$ 5,000.00	\$ 2,500.00	\$ 950.00	\$ 8,000.00	\$ 3,000.00	\$ 15,000.00	\$ 3,500.00	
C.	Additional Services											
1.	Right of Entry, Right of Way Negotiation and Appraisal Services											
	a. Review Meetings with city and engineers	16										\$ 2,400
	b. Right of Way Agent - \$1,200 not to exceed per parcel		5	16	2							\$ 17,920
	c. Right of way negotiations - \$120 per hour	24										\$ 3,600
	d. Administrative support - \$80 per hour	24										\$ 3,600
2.	Environmental, Geotechnical, Cultural and Historical investigations and studies											
	a. Cultural Resources Desktop Report					9						\$ 22,500
	b. Stage 1 Geo Report						9					\$ 8,550
	c. Geotechnical Engineering Report - varies by site, \$5,000 - \$10,000							9				\$ 72,000
	d. Phase 1ESA								1			\$ 3,000
	e. Limited Subsurface Investigation - \$12,000 to \$15,000									1		\$ 15,000
	f. Waters of the US / Wetlands Report										1	\$ 3,500
	Task C Hours / Units	64	5	16	2	9	9	9	1	1	1	
	Task C Costs	\$ 9,600	\$ 6,000	\$ 1,920	\$ 10,000	\$ 22,500	\$ 8,550	\$ 72,000	\$ 3,000	\$ 15,000	\$ 3,500	\$ 152,070