

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and Teague, Nall & Perkins, Inc. (“Consultant”).

1. SCOPE OF SERVICES.

Attached hereto and incorporated for all purposes incident to this Agreement is **Attachment A** more specifically describing the services to be provided hereunder.

2. TERM.

This Agreement shall commence upon execution by the parties (the “Effective Date”) and terminate upon completion of the work specified in the scope of services unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

3. COMPENSATION.

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed Seventy-Six Thousand and No /100 dollars in accordance with the fee schedule incorporated herein as **Attachment B**, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in Attachment A, Scope of Work. In the event of partial performance the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager’s designee.

The Consultant shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

4. TERMINATION.

4.1. Written Notice.

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the end of the term of this agreement as provided in Article 2, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

6. RIGHT TO AUDIT.

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors, and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

8. CHARACTER OF SERVICES AND INDEMNIFICATION.

8.1 Character of Services.

Consultant shall perform as an independent contractor all services under this Agreement with the professional skill and care ordinarily provided by competent architects, engineers, or landscape architects practicing under the same or similar circumstances and professional license. Further, Consultant shall perform as an independent contractor all services under this Agreement as expeditiously as possible as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Provided, however, if this is a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part, the architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Consultant shall provide professional services necessary for the work described in Attachment "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Attachment "A" the terms and conditions of this Agreement shall be final and binding upon both parties hereto.

8.2 Indemnification.

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND

PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY FEES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OF OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, WHETHER SAID NEGLIGENCE IS SOLE NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE, CONCURRENT NEGLIGENCE OR ANY OTHER FORM OF NEGLIGENCE. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONSULTANT AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR CONSULTANT.

CONSULTANT WARRANTS THAT NO MUSIC, LITERARY OR ARTISTIC WORK OR OTHER PROPERTY PROTECTED BY COPYRIGHT WILL BE REPRODUCED OR USED, NOR WILL THE NAME OF ANY ENTITY PROTECTED BY TRADEMARK BE REPRODUCED OR USED BY CONSULTANT UNLESS CONSULTANT HAS OBTAINED WRITTEN PERMISSION FROM THE COPYRIGHT OR TRADEMARK HOLDER AS REQUIRED BY LAW, SUBJECT ALSO TO CITY'S CONSENT. CONSULTANT COVENANTS TO COMPLY STRICTLY WITH ALL LAWS RESPECTING COPYRIGHTS, ROYALTIES, AND TRADEMARKS AND WARRANTS THAT IT WILL NOT INFRINGE ANY RELATED STATUTORY, COMMON LAW OR OTHER RIGHT OF ANY PERSON OR ENTITY IN PERFORMING THIS AGREEMENT. CONSULTANT WILL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) WITH RESPECT TO SUCH COPYRIGHT, ROYALTY OR TRADEMARK RIGHTS TO THE EXTENT CAUSED BY CONSULTANT OR FOR WHOM CONSULTANT IS LEGALLY LIABLE.

THE PROVISIONS OF THIS SECTION ARE INTENDED TO ONLY PROVIDE INDEMNIFICATION TO THE EXTENT ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 WILL STILL NAME CITY AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY.

9. ASSIGNMENT AND SUBCONTRACTING.

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

10. INSURANCE.

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

- (a) Commercial General Liability
 \$1,000,000 Each Occurrence
 \$1,000,000 Aggregate

- (b) Automobile Liability
 \$1,000,000 Each accident on a combined single limit basis or
 \$250,000 Bodily injury per person
 \$500,000 Bodily injury per person per occurrence
 \$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

- (c) Worker's Compensation
 Statutory limits
 Employer's liability
 \$100,000 Each accident/occurrence
 \$100,000 Disease - per each employee
 \$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent

with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

(d) Errors & Omissions (Professional Liability):

\$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Consultant agrees to comply with all applicable federal, state and local laws, ordinances,

rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

12. NON-DISCRIMINATION COVENANT.

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

13. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson
City Manager
Attn: Tommy Ludwig
141 W. Renfro St.
Burleson, TX 76028

Teague, Nall & Perkins, Inc.

Ryan Jones, PE
5237 N Riverside Dr #100
Fort Worth TX 76137

14. GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

15. NO WAIVER.

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States

District Court for the Northern District of Texas.

17. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. FORCE MAJEURE.

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

19. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

22. ENTIRETY OF AGREEMENT.

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

23. SIGNATURE AUTHORITY.

The person signing this agreement hereby warrants that he/she has the legal authority to

execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

24. NO WAIVER OF GOVERNMENTAL IMMUNITY.

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

26. MANDATORY ANTI-ISRAEL BOYCOTT PROVISION.

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

27. NON-EXCLUSIVITY.

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

28. NO THIRD-PARTY BENEFICIARIES.

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

30. OWNERSHIP OF DOCUMENTS.

All documents and materials prepared by Consultant under the terms of this Agreement are the City's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection whenever requested. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

31. COUNTERPARTS; PDF SIGNATURES.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BURLESON:


Teague, Nall & Perkins, Inc.

By: _____

Name: _____

Title: _____

Date: _____

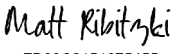
Signed by:

By: _____
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Name: RYAN JONES

Title: Team Leader, Principal

Date: 8/28/2024

APPROVED AS TO FORM:

DocuSigned by:

By: _____
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City Attorney, Assistant City Attorney,
or Deputy City Attorney

ATTACHMENT A

I. Scope of Services

ATTACHMENT 'A'
ITEMIZED SCOPE OF SERVICES
DESIGN AND CONSTRUCTION SERVICES FOR
VAUGHN DRIVE SIDEWALK IMPROVEMENTS
CITY OF BURLESON

GENERAL PROJECT DESCRIPTION:

The scope set forth herein defines the work to be performed by the CONSULTANT in completing the project. Both the CITY and CONSULTANT have attempted to clearly define the work to be performed and address the needs of the Project.

WORK TO BE PERFORMED

Consultant shall provide survey, design, bidding, and construction administration services for the Vaughn Drive Sidewalk Improvements project. The limits of the project are generally along Vaughn Drive from McNairn Road to NW Summercrest Blvd. The project includes the construction of approximately 1,500 LF of new 5' sidewalk along the south side of Vaughn Drive. It is anticipated that some driveway replacements will also be necessary to accommodate the new sidewalk. The proposed sidewalk will provide connectivity between existing segments of the sidewalk and provide an ADA-compliant pedestrian route to the Recreation Center along Summercrest Blvd.



The following tasks have been identified for inclusion as Basic Services:

- Task 1. Engineering Services
- Task 2. Survey Services
- Task 3. Bid Phase Services
- Task 4. Construction Administration

COMPENSATION:

Compensation to be on a basis of the following:

1. **BASIC SERVICES:** The CITY agrees to pay the Consultant as follows:
 - a. Engineering Services (Task 1) shall be performed for this fixed fee amount of **\$48,000**. The services to be provided are further outlined in Attachment 'A'.
 - b. Survey Services (Task 2) shall be performed for this fixed fee amount of **\$15,500**. The services to be provided are further outlined in Attachment 'A'.
 - c. Bid Phase Services (Task 3) shall be performed for this fixed fee amount of **\$5,000**. The services to be provided are further outlined in Attachment 'A'.
 - d. Construction Administration (Task 4) shall be performed for this fixed fee amount of **\$7,500**. The services to be provided are further outlined in Attachment 'A'.

2. **ADDITIONAL SERVICES:** The CITY agrees to pay the Consultant as follows:
 - a. Services provided by the CONSULTANT which are not specifically included in Basic Services as defined above or delineated in Attachment 'A' shall be reimbursed on an hourly basis at standard TNP hourly rates (Attachment 'B'). Examples of Additional Services are included in the Scope of Services (Attachment 'A').

3. **PAYMENT TERMS:** CITY shall be billed monthly for services rendered and pay upon receipt of invoice. Delays of transmitting payments to Consultant more than 30 days from invoice date may result in cessation of services until payment is received.

FEE SUMMARY:

<u>Basic Services</u>		
1. Engineering Services	\$48,000	(Fixed Fee)
2. Survey Services:	\$15,500	(Fixed Fee)
3. Bid Phase Services:	\$5,000	(Fixed Fee)
4. Construction Administration:	\$7,500	(Fixed Fee)
Total	\$76,000	

SCHEDULE: The proposed services shall begin within 10 working days of authorization to proceed. The following reflects our understanding of the City’s desired project schedule:

Project Milestone Schedule	
Project Milestone	Projected Completion
Notice to Proceed	09.10.24
Survey Complete	10.22.24
Preliminary (60%) Submittal	12.05.24
City Review Complete	12.19.24
Final (100%) Submittal	01.23.25
City Review Complete	02.06.25
Bid Documents Complete/Advertising	02.27.25
Construction Complete	June 2025

It is understood and mutually agreed that the objective of all involved in this project is to produce and provide quality and complete information and deliverables, which requires a considerable amount of coordination and cooperation, as well as adequate time for research, analysis and development. It is also understood that Consultant’s ability to perform the scope of service is dependent upon timely receipt of information and data from the CITY, as well as other requested materials as may be needed to complete the work. Adjustments in schedule may be required should information or data from the CITY become delayed or not provided in a timely manner. It is anticipated that the life of this service agreement will be no more than **nine (9) months** after receiving the authorization to proceed. If necessary and mutually agreed in writing by both parties, the duration of the contract can be extended.

BASIS FOR SCOPE OF SERVICES

The following assumptions were used by the CONSULTANT for the preparation of the scope of Basic Services for this Project and the determination of fees. In the event that there are changes to the scope of work, a contract fee amendment may be necessary.

1. The Project will be based on the design and construction of a new 5' sidewalk along the south side of Vaughn Drive from McNairn Road to NW Summercrest Blvd. It is anticipated that some driveway replacements and parkway restoration will also be required to accommodate the new sidewalk.
2. Engineering services include a horizontal and cross-sectional design that is compliant with the requirements found in ADA and PROWAG.
3. Survey services will include topographic survey and approximate ROW. No detailed boundary survey will be needed for this project.
4. No easements are anticipated. Therefore, easement documents and associated negotiation services are not included in the scope.
5. Geotechnical services are not included in this scope of services.
6. Environmental services are not included in this scope of services.
7. The existing roadway/drainage is anticipated to remain in place, therefore the design of roadway/drainage improvements is not included in this scope of work.
8. Water & Sewer utility design is not included in this scope of work.
9. A detailed Traffic Control Plan (TCP) is not included in this scope of work.
10. The plans will be based on City of Burleson's standards and criteria that are in place at the time this agreement is executed. In the event that other standards are imposed or other entities become involved in the review process, the stated fees may need to be renegotiated to account for any additional effort on the part of the Engineer.
11. No construction staking is included in the scope of this Project.
12. Subsurface utility engineering (SUE) and investigations are not included in this scope of services. The CONSULTANT shall research existing utilities, and coordinate with the franchise utility companies to reflect the approximate location of existing utilities in the plans. During the design phase of the Project, the CONSULTANT will coordinate with the City and the franchise utility companies regarding any adjustments or relocations required by the Project.
13. No public meeting is anticipated for the Project.

DETAILED SCOPE OF SERVICES:**TASK 1. ENGINEERING SERVICES****1. Data Collection**

- The CONSULTANT will collect, compile, and evaluate available data from the CITY and other entities that provide existing information related to the design of the Project.
- The CONSULTANT will make an effort to obtain as-built, record, and/or future plans for the following facilities in the Project area including:
 - Roadway
 - Sidewalks
 - Water Lines
 - Sanitary Sewer Lines
 - Storm Drain Lines
 - Telephone and Cable TV Underground and/or Overhead Lines
 - Gas/Petroleum Lines
 - Fiber Optic Lines
 - Other Utilities Known to Serve the Project Area
- The CONSULTANT will prepare a project base file using the surveyed topo and subsurface utility designations.

2. Project Management

- Managing the Team
 - Lead, manage and direct design team activities
 - Ensure quality control is practiced in performance of the work
 - Communicate internally among team members
 - Task and allocate team resources
- Communications and Reporting
 - Attend a pre-design project kickoff meeting with CITY staff to confirm and clarify scope, understand CITY objectives, and ensure economical and functional designs that meet CITY requirements.
 - Conduct review meetings with the CITY at the end of each design phase.
 - Conduct site visits on an as-needed basis for investigations and coordination during the design process.
 - Prepare and submit monthly progress reports in the format requested by the CITY.

- Prepare and submit an anticipated Project Schedule. Provide schedule updates as the Project progresses through the design process.
- Coordinate with CITY, utilities, property owners, and other agencies and entities for the planning and design of the proposed infrastructure and provide and obtain information needed to prepare the design.
- Personnel and Vehicle Identification: When conducting site visits to the project location, the CONSULTANT or any of its sub-consultants shall carry readily available information identifying the name of the company and the company representative.

3. Sidewalk and Driveway Design

The proposed 5' sidewalk will be designed within the existing right-of-way along the south side of Vaughn Drive from McNairn Road to NW Summercrest Blvd.

- **Horizontal Geometry.** The CONSULTANT shall design the proposed sidewalk based on topographic survey to identify the best horizontal geometry within the existing right-of-way. The design will minimize disturbance and impact to the adjacent properties along the corridor as much as possible. Sidewalk and driveway design shall be compliant with Public Right-of-Way Accessibility Guidelines (PROWAG) and American Disabilities Act (ADA) requirements.
- **Typical Section.** A typical section will be developed to depict the proposed sidewalk design. Typical sections shall include representations of the various proposed conditions, such as pavement materials and thickness, offset, cross-slopes, side slopes, retaining wall locations, clear zones, border width, and right-of-way width.
- **Driveway Profiles.** The CONSULTANT shall provide design cross sections at all driveways to analyze fitment within the right-of-way and sloped connection to existing driveway pavement. Driveway profiles will be used to delineate the limits of construction outside of the right-of-way, as needed.
- **Curb Ramps and Intersection Crossings.** The CONSULTANT shall design directional curb ramps and crossings at all intersections within the project limit. Existing curb ramps within the project limit will be evaluated to ensure compliance with current ADA requirements and replaced as necessary. If existing curb ramps adjacent to the project are to remain in place, the proposed improvements will be designed to align appropriately.

4. Plan Development

- Cover Sheet & Index
- General Notes & Legend Sheet
- Survey Control Sheets - Prepare a set of control data sheets listing horizontal and vertical control information. Coordinates, stations, and elevations of key alignment features and benchmarks shall be noted.
- Overall Project Property Sheet(s) with property owner information.
- Sidewalk Plan Sheets – Prepare plan sheets at 1”-20’ horizontal scale on 22” x 34” plan sheets, unless otherwise directed.
- Driveway Profiles – Provide design cross sections at all driveways with annotation at all breakpoints and slopes. Sections will be produced at a 1” = 10’ or 1” = 20’ scale on 22” x 34” plan sheets.
- Erosion Control – An Erosion Control Plan will be prepared for the project, but the Stormwater Pollution Prevention Plan (SWPPP) will be prepared by the contractor. Standard CITY details for erosion control will be used as appropriate.
- Standards - Identify and acquire all applicable standards. Modify standards as needed. Plot sheets and incorporate into the plans.

5. Project Quantities and Opinion of Probable Cost

- Project quantities and an Opinion of Probable Construction Cost will be a part of the 60% and 100% submittals, as outlined below.
- The CONSULTANT's opinion of probable construction costs will be prepared for the entire project using current unit cost data. These opinions of cost will be provided on the basis of CONSULTANT's experience and professional judgment, but will not imply any warranty that final bids might not vary from the cost opinions provided, since neither the CONSULTANT nor the City have any control over market conditions or bidding procedures.

6. Private Utility Coordination

- The CONSULTANT shall provide private utility companies that may be impacted by the Project with a project overview, project schedule, and a status plan set at the 60%, and 100% design milestones.
- The CONSULTANT shall review private utility relocation plans if provided by the utility and provide feedback regarding conflict resolution.
- The CONSULTANT shall not design private utility relocations or manage/facilitate private utility relocations.

7. TDLR Review by RAS

It is anticipated that the construction cost for this sidewalk project will exceed \$50,000 and therefore the Texas Department of Licensing and Regulation (TDLR) will require a plans review and construction inspection by a registered accessibility specialist (RAS).

- The CONSULTANT shall coordinate and complete a RAS review of the construction plans once the design is complete.
- The CONSULTANT shall coordinate and complete a RAS inspection of the project once construction is completed.

8. Submittals

- Preliminary Plans (60%) - The Preliminary plans will include essentially complete culvert and channel improvement plans. CONSULTANT shall submit a pdf copy of the preliminary plan set for City review, along with a pdf copy of Opinion of Probable Construction Cost. Upon City approval of preliminary plans, pdf copies will be delivered to utility companies as plans adequate for utility relocation design.
- Final Plans (100%) - Final plans will include the complete plan set, along with bid documents and specifications and a final updated Opinion of Probable Construction Cost. CONSULTANT shall submit a pdf copy of the final plan set for City review, along with a pdf copy of Opinion of Probable Construction Cost.
- Bid Documents - Final documents will be based on City review comments of the final plan submittal. Deliverables will include a pdf copy of the final plan set, along with a final Opinion of Probable Construction Cost, and complete bid documents and specifications.

ASSUMPTIONS

- The Project will be designed in accordance with the CITY's Design Standards & Criteria. If the CITY makes significant changes to its design standards during the design process and these changes require additional effort or work on behalf of the Engineer, it may be necessary to execute a fee amendment to cover the additional work.
- No additional easements or ROW taking is anticipated for the project.
- CONSULTANT shall not proceed with subsequent design activities without obtaining the CITY's approval of the previous design plan submittal.
- The SWPPP shall be the responsibility of the Contractor.
- The CITY will lead and manage the project advertisement, bidding, and award process with support from the CONSULTANT.

DELIVERABLES

- A. Meeting minutes with action items
- B. Monthly invoices
- C. Monthly progress reports
- D. Project schedule with updates
- E. Electronic submission of PDF plans at each milestone submittal
- F. Opinion of probable construction cost at each milestone submittal
- G. Bid Documents and Specifications

TASK 2. SURVEY SERVICES

CONSULTANT shall provide all office and field work necessary to prepare a Topographic Design Survey for the eastern half of Vaughn Drive between McNairn Road and Northwest Summercrest Boulevard with the limits being the centerline of Vaughn Drive to the face of the houses within the City of Burleson, Texas.

A. Topographic Survey

Our services shall include all office and field work necessary to prepare a topographic survey which will identify topography (one-foot contours), visible features and above-ground improvements including pavement, structures, fences, trees (6" dbh and greater), sidewalks, curb inlets, valves, and other pertinent features within the project area as necessary for engineering design. A minimum of three (3) benchmarks shall be established within or near the survey corridor for use during the design and construction phases of the project. The limits of the survey will be as shown in Attachment 'A'.

Texas811 will be notified to coordinate marking of underground utilities. However, lacking excavation, the exact location of underground utilities and features cannot be accurately, completely, and reliably depicted. In some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response. Where additional or more detailed information is required, the CITY is advised that excavation may be necessary.

All survey information provided by the CONSULTANT will be referenced to Grid North of the Texas Coordinate System of 1983 {North Central Zone No. 4202; NAD83(2011) Epoch 2010} as derived locally from Allterra Central's continuously operating reference stations via real time kinematic survey methods. Vertical Datum shall be based on the City of Burleson's geodetic control network.

CONSULTANT shall perform all surveying services in accordance with the General Rules and Procedures of Practice, and the Professional and Technical Standards established by the Texas Board of Professional Engineers and Land Surveyors.

ASSUMPTIONS

- Construction staking to be performed by the Contractor.
- Boundary survey is not included in the scope of services.
- Preparation of easement or right-of-way documents is not included in the scope of services.

DELIVERABLES

AutoCAD Civil 3D base map for in-house design purposes only.

TASK 3. BID PHASE SERVICES

CONSULTANT will provide the following services during the Project's bidding and award phase:

- CONSULTANT to provide bidding documents to CITY, including bid tabs in spreadsheet form, for advertisement through CITY's Bonfire system.
- Assist the CITY in addressing bidder questions and preparing and distributing any addenda.
- Assist in the bid opening.
- Assist the CITY in evaluating the best value criteria and determining the qualifications of prospective contractors and their teams. Provide a letter of recommendation to the City for award of the project.
- Assist the CITY in coordinating with the selected Contractor to compile the necessary bonds and insurance to prepare the contract documents for execution by the CITY and the Contractor.
- Incorporate all addenda into the contract documents and issue conformed sets of plans and specifications for use as the issued for construction documents.

ASSUMPTIONS

- The CITY is responsible for the cost of advertising the project.
- The bidding format will be based on the low bidder.
- The bid opening will take place online through the CITY's Bonfire system.

DELIVERABLES

- A. Addenda
- B. Bid tabulations
- C. Recommendation of award
- D. Four (4) sets of original executed contract documents.

- E. Three (3) full-size and six (6) half-size sets of conformed plans.
- F. An electronic copy (PDF) of conformed plans and contract documents.

TASK 4. CONSTRUCTION ADMINISTRATION

CONSULTANT will provide construction administration services for the project as follows.

A. Construction Support

- CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor
- Assemble the executed contracts with the conformed plans for distribution at the pre-construction meeting.
 - Four (4) sets of original executed contract documents.
 - Three (3) full-size and six (6) half-size sets of conformed plans.
 - Two (2) flash drives with conformed plans and contract documents.
- The CONSULTANT shall prepare a pre-construction meeting agenda and conduct the pre-construction meeting in conjunction with the CITY. CONSULTANT shall prepare and distribute meeting minutes.
- Maintain record of Contractor's submittals, RFI's, change orders, etc., and provide for filing and retrieval of Project documentation.
- Provide interpretations and clarifications of contract documents, prepare change orders, and make recommendations as to the acceptability of the work.
- Review the Contractor's monthly pay requests and make recommendations to the CITY regarding acceptance and recommendation for payment.
- Participate in up to three (3) meetings with the CITY and/or Contractor for the purpose of coordination or to address construction related issues.
- The CONSULTANT shall attend the "Final" project walk through and prepare the final punch list. CONSULTANT shall coordinate with the construction inspector and CITY to confirm that the punch list items have been addressed before issuing any substantial or final completion letters to the CITY.
- The CONSULTANT shall prepare Record Drawings using information provided by the CITY and the Contractor. Record drawings shall consist of one full size (22"x34") blackline copy, two half-size (11"x17") blackline copies, and a flash drive with PDF and AutoCAD (Civil 3D) versions.
- Upon completion of Project, prepare and issue a Letter of Recommendation of Project Acceptance to the CITY that also identifies the start of the Project's warranty period.

ASSUMPTIONS

- The length of construction is anticipated to be a period of three (3) months.

DELIVERABLES

- A. Meeting agenda and minutes
- B. Change orders and field changes
- C. Progress payment recommendation letters
- D. Final punch list
- E. Record drawings
- F. Recommendation of acceptance letter

INFORMATION/SERVICES PROVIDED BY CITY

CITY shall perform/provide the following:

- As-builts and record drawings.

ADDITIONAL SERVICES NOT INCLUDED IN THE SCOPE OF SERVICES

CITY and CONSULTANT agree that the following services are beyond the Scope of Services described in the tasks above. However, CONSULTANT can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the CONSULTANT as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Services related to roadway design.
- Services related to drainage design.
- Services related to water or sanitary sewer design.
- Services related to development of Stormwater Pollution Prevention Plan
- Services related to Traffic Control Plan.
- Subsurface Utility Engineering (SUE) services.
- Environmental and Cultural resources services.
- Geotechnical engineering services.
- Public meetings or public engagement services.
- Construction inspection services.
- Design of improvements beyond those identified in the scope of services.
- Services related to boundary survey.
- Services related to the preparation of ROW or easement exhibits and docs.
- Services related to ROW or easement acquisition.
- Services related to Survey staking of temporary construction easements.
- Services related to utility relocation verifications.
- CCTV inspection of existing utilities.
- Services related to development of the CITY's project financing and/or budget.
- Services related to disputes over pre-qualification, bid protests, bid rejection and re-bidding of the contract for construction.
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services related to Survey Construction Staking.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.

ATTACHMENT 'B' STANDARD RATE SCHEDULE

*Effective January 1, 2024 **

Engineering/Landscape Architecture/ROW	Hourly Billing Rate
Principal or Director	\$310.00
Team Leader	\$285.00
Senior Project Manager	\$280.00
Project Manager	\$240.00
Senior Engineer	\$290.00
Project Engineer	\$190.00
Senior Structural Engineer	\$295.00
Structural Engineer	\$210.00
Engineer III/IV	\$170.00
Engineer I/II	\$145.00
Senior Landscape Architect/Planner	\$290.00
Landscape Architect / Planner	\$210.00
Landscape Designer	\$150.00
Senior Designer	\$195.00
Designer	\$170.00
Senior CAD Technician	\$165.00
CAD Technician	\$130.00
IT Technician	\$190.00
Clerical	\$90.00
ROW Manager	\$265.00
Senior ROW Agent	\$195.00
ROW Agent	\$155.00
Relocation Agent	\$195.00
ROW Tech	\$110.00
Intern	\$90.00
Surveying	Hourly Billing Rate
Survey Manager	\$310.00
Registered Professional Land Surveyor (RPLS)	\$265.00
Field Coordinator	\$160.00
S.I.T. or Senior Survey Technician	\$155.00
Survey Technician	\$140.00
1-Person Field Crew w/Equipment**	\$170.00
2-Person Field Crew w/Equipment**	\$200.00
3-Person Field Crew w/Equipment**	\$225.00
	\$245.00

4-Person Field Crew w/Equipment**	
Flagger	\$65.00
Abstractor (Property Deed Research)	\$105.00
Small Unmanned Aerial Systems (sUAS) Equipment & Crew	\$475.00
Terrestrial Scanning Equipment & Crew	\$290.00

Utility Management, Utility Coordination, and SUE	Hourly Billing Rate
Senior Utility Coordinator	\$190.00
Utility Coordinator	\$170.00
SUE Field Manager	\$190.00
Sr. Utility Location Specialist	\$180.00
Utility Location Specialist	\$135.00
1-Person Designator Crew w/Equipment***	\$165.00
2-Person Designator Crew w/Equipment***	\$220.00
2-Person Vac Excavator Crew w/Equip (Exposing Utility Only – 4 hour minimum)	\$335.00
Core Drill (equipment only – per day)	\$830.00
SUE QL-A Test Hole (0 < 8 ft; cost per each)***	\$2,400.00
SUE QL-A Test Hole (> 8 < 15 ft; cost per each)***	\$2,900.00

Construction Management, Construction Engineering and Inspection (CEI)	Hourly Billing Rate
Construction Inspector I/II	\$120.00
Construction Inspector III	\$140.00
Senior Construction Inspector	\$160.00
Construction Manager	\$235.00
Senior Construction Manager	\$280.00

Direct Cost Reimbursables

No individual or separate accounting of direct expense items, such as prints, plots, photocopies, and mileage will be performed by TNP.

Any permit fees, filing fees, or other fees related to the project and paid on behalf of the client by TNP to other entities shall be invoiced at 1.10 times actual cost.

Notes:

All subcontracted and outsourced services shall be billed at rates comparable to TNP's billing rates above or cost times a multiplier of 1.10.

* Rates shown are for 2024 and are subject to change in subsequent years.

** Survey equipment may include truck, ATV, Robotic Total Station, GPS Units and Digital Level.

*** Includes crew labor, vehicle costs, and field supplies.