

**CITY OF DALTON
PUBLIC WORKS DEPARTMENT**

GENERAL PROFESSIONAL SERVICES AGREEMENT

THIS GENERAL PROFESSIONAL SERVICES AGREEMENT is made and entered into on this 7th day of February, 2022 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Geo-Hydro Engineers, Inc., hereinafter referred to as "CONSULTANT".

WHEREAS, the CITY desires to engage the CONSULTANT to provide professional services; and,

WHEREAS, the CITY finds that the proposed Scope of Services and terms of this Contract are acceptable; and,

WHEREAS, the CONSULTANT desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

WITNESSETH: That the parties hereto for the considerations hereinafter provided covenant and agree as follows:

1. EMPLOYMENT OF CONSULTANT: The CITY hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.

2. PROJECT/SCOPE OF SERVICES: The CONSULTANT shall complete the project and perform the scope of services specified in the CITY's Request for Proposal which is included herein by reference and the specifications provided in the CONSULTANT's proposal attached hereto as Exhibit "A".

3. ADDITIONAL SERVICES: The CONSULTANT shall provide additional services, not specifically provided for in Exhibit "A", upon written request and authorization by the CITY.

4. DATE OF COMMENCEMENT: The CONSULTANT shall commence work on the project on February 14th, 2022. If no date is provided, then the date of commencement shall be five days from execution of this Agreement.

5. DATE OF COMPLETION: The CONSULTANT shall complete the project on or before March 21st, 2022.

6. CONTRACT SUM: The CITY shall pay to CONSULTANT the total price not to exceed \$10,000.00 Dollars for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONSULTANT for any authorized additional services performed at the rate or amount provided in the Compensation Schedule attached hereto as Exhibit "B".

7. CONTRACT PENALTY: The CONSULTANT shall pay to the CITY the amount of \$ 100.00 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the contract sum to CONSULTANT upon complete performance of the project and terms of this Agreement. CONSULTANT shall provide to CITY an Affidavit from the CONSULTANT stating the CONSULTANT has fully performed all terms of the Agreement. Final payment shall be made no later than 30 days after receipt of said Affidavit. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONSULTANT. Payment(s) shall be made via electronic funds transfer (EFT).

9. CITY COVENANTS: CITY covenants and agrees:

(a) to provide all available information, data, reports, records and maps to which CITY has possession or control which are necessary for CONSULTANT to perform the scope of services provided for herein;

(b) to provide reasonable assistance and cooperation to CONSULTANT in obtaining any information or documentation which are necessary for CONSULTANT to perform the scope of services provided for herein;

(c) to designate a representative authorized to act on the CITY's behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Director of Public Works;

(d) to permit access to the subject public property and obtain permission to access necessary private property for CONSULTANT to complete the scope of services;

(e) to provide reasonable assistance to CONSULTANT in applying for and obtaining any necessary Federal, State or local government permits for the scope of services;

10. CONSULTANT COVENANTS: CONSULTANT covenants and agrees:

(a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by consultants practicing in the same or similar

field;

- (b) to use only employees and subcontractors qualified to complete the work with sufficient experience in same or substantially similar projects;
- (c) to use only properly licensed employees or subcontractors for any work requiring a specialty or professional license issued by the State of Georgia;
- (d) to designate a representative authorized to act on the CONSULTANT's behalf with respect to the project.
- (e) to use the subject property in a safe, careful and lawful manner;
- (f) to promptly report in writing to CITY any unsafe or defective condition of the subject property and any adverse site condition, which shall include but not be limited to limited access, extremely dense vegetation, subsurface conditions, damaged property, or existing utilities, that may adversely affect CONSULTANT's ability to complete the scope of services or other terms of this Agreement;
- (g) to promptly report in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONSULTANT, its employees, agents, subcontractors, or invitees;
- (h) to keep the subject property in a clean and orderly condition and to remove any personal property of CONSULTANT upon completion of the project;
- (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
- (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONSULTANT's services;
- (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
- (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.

11. INDEMNITY: CONSULTANT shall indemnify CITY from and hold CITY harmless against all claims, demands and judgments for loss, damage or injury to person or property, resulting from or incurring by reason of CONSULTANT'S use and occupancy of the subject property or by the negligence, willful acts, or errors or omissions with respect to the performance of the professional services of CONSULTANT, its employees, agents, subcontractors, or invitees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY shall not indemnify or hold harmless CONSULTANT for any claims arising from the actions or omissions of CONSULTANT or any third party.

Additionally, CONSULTANT agrees that all personal property that may be at any time at the subject property shall be at CONSULTANT's sole risk or at the risk of those claiming through CONSULTANT and that CITY shall not be liable for any damage to or loss of such personal property except if arising from or caused by the sole fault or negligence of CITY.

12. INSURANCE: CONSULTANT agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton or as provided herein below, whichever is greater. CONSULTANT shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

- (a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:
 - (1) Workers' Compensation statutory limits;
 - (2) Employer's Liability:
 - a. Bodily Injury by Accident - \$100,000.00
 - b. Bodily Injury by Disease - \$500,000.00 policy limit
 - c. Bodily Injury by Disease - \$100,000.00 each employee.

CONSULTANT shall complete the Workers' Compensation Insurance Affidavit of the City of Dalton to determine if any exemption to Workers' Compensation Insurance is applicable.

- (c) Auto Liability Coverage – Auto Liability policy with a minimum of \$1,000,000.00 limit per occurrence for bodily injury and property damage, if motor vehicle is used in performance of scope of services. Comprehensive form covering all owned, non-

owned, and hired vehicles.

(d) Professional Services Errors & Omissions Coverage – Professional Services E&O policy with a minimum of \$1,000,000.00 per claim.

14. ASSIGNMENT: CONSULTANT may not assign all or any portion of the Agreement without the prior written permission of CITY.

15. SUBCONTRACTOR: The CONSULTANT shall provide written notice to CITY of CONSULTANT’S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified to complete the project. Any subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

16. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

17. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to: City of Dalton
ATTN: City Administrator
P.O. Box 1205
Dalton, GA 30722-1205

Such notice to CONSULTANT shall be mailed to: Geo-Hydro Engineering Inc.
1000 Cobb Place Blvd, Suite 290
Kennesaw, Georgia 30144

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

18. CONTRACT DOCUMENTS: The Agreement shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Addenda relating to bidding and proposal requirements, and any other written information provided by the CITY in anticipation of receiving bids or proposals, if any, except as specifically excluded herein, and the CONSULTANT’S bid or proposal. The terms of this Agreement shall supersede any terms in

the above-referenced documents in direct conflict with the terms of this Agreement.

Additionally, the Contract Documents and all drawings, plans, specifications and other related construction or service related documents shall be the sole property of the CITY. The CONSULTANT shall be permitted to retain copies thereof for its records and for its future professional services.

Additionally, CITY shall be authorized to rely upon all documents, whether in hard copy or electronic format, provided by CONSULTANT. Any changes to the material terms of any document shall be clearly identified and noted to CITY.

19. VENDOR: CONSULTANT shall register and remain active as a Vendor of the CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor during the term of this Agreement.

20. TERMINATION OF CONTRACT: In the event that CONSULTANT defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of this Agreement for default, CITY shall provide written notice to CONSULTANT of any default and provide CONSULTANT ten (10) days to correct said default or deficiency,

21. MISCELLANEOUS PROVISIONS:

(a) Governing Law; Venue. This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONSULTANT shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

(g) Attorney Fees. In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONSULTANT, then CONSULTANT shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees.

(h) Confidentiality. All information and documentation regarding the project and the CONSULTANT's services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONSULTANT:

CONSULTANT:

Geo-Hydro Engineering, Inc.

By: _____

Title: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____

MAYOR

Attest: _____

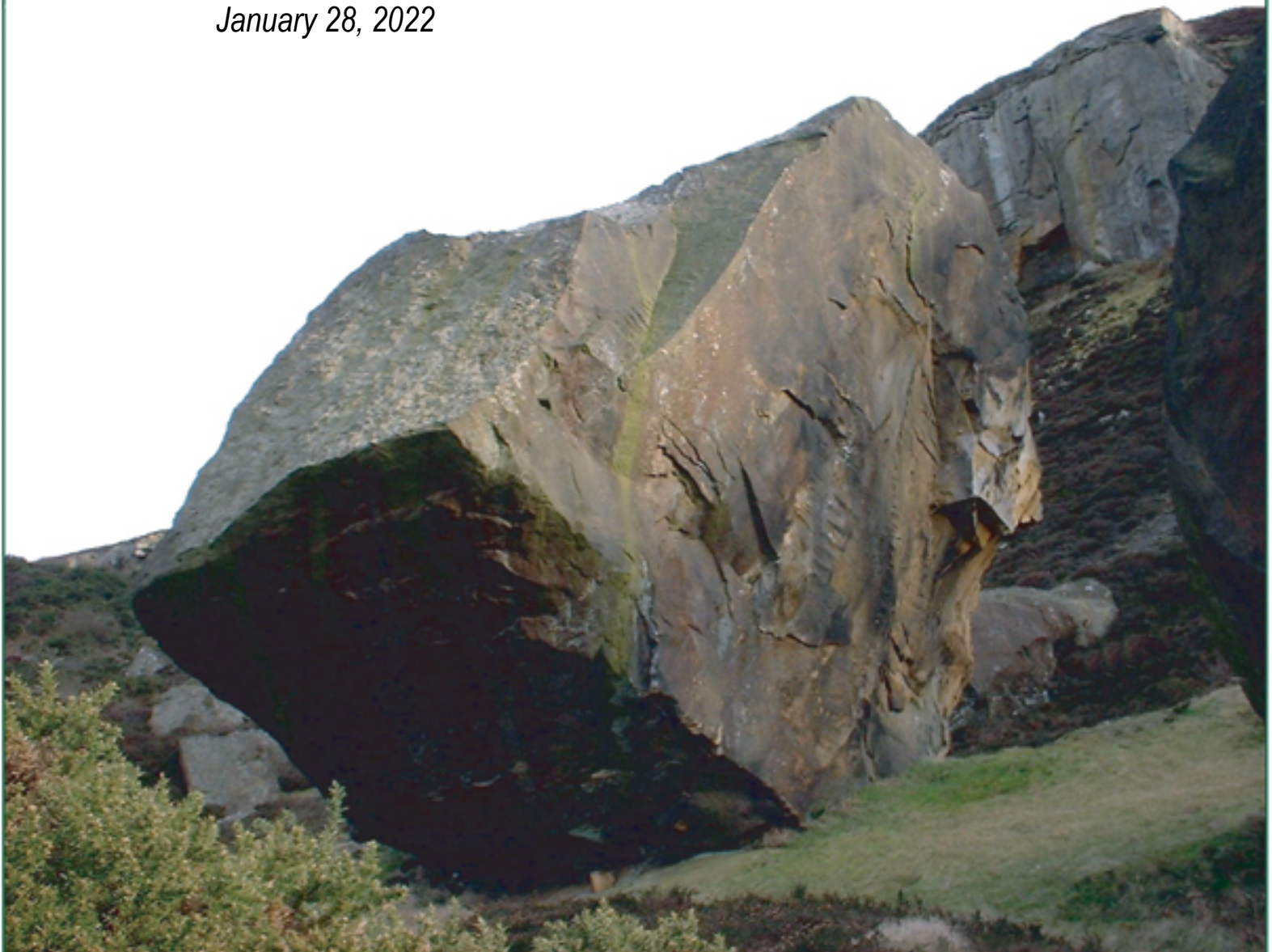
CITY CLERK



Proposal to Perform Supplemental Piezometer Installation

**New Aquatic Center
John Davis Recreation Center
Dalton, Georgia
Geo-Hydro Proposal Number 211941.P1**

*Prepared for City of Dalton
January 28, 2022*



Ms. Megan Elliott
City of Dalton
300 West Waugh Street
Dalton, Georgia 30722

January 28, 2022

**Proposal to Perform Supplemental Piezometer Installation
New Aquatic Center
John Davis Recreation Center
Dalton, Georgia
Geo-Hydro Proposal Number 211941.P1**

Dear Ms. Elliott:

Geo-Hydro Engineers, Inc. appreciates the opportunity to present this proposal to provide supplemental geotechnical engineering services for the above referenced project. Geo-Hydro is currently engaged to perform a subsurface exploration and geotechnical engineering evaluation for the project.

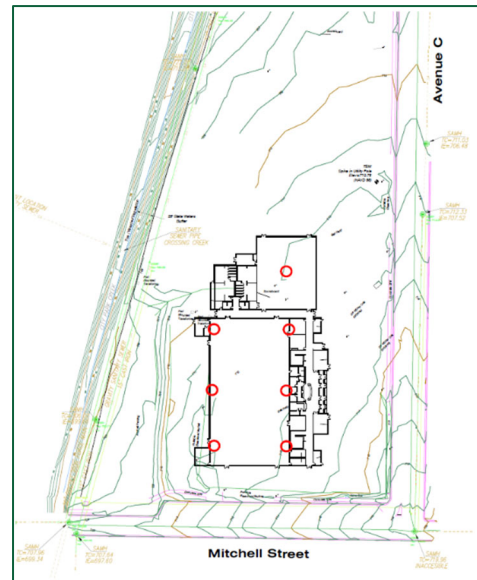
Our ongoing exploration included seven soil test borings performed in the area of the new aquatic center. All of the borings encountered groundwater at depths ranging from 9 to 19 feet. In order to better understand the potential impacts of groundwater conditions on the construction and design of the planned aquatic center, the project team has requested the installation of six temporary piezometers at the approximate location shown on the annotated site plan below.

An outline of the exploration is provided in the following sections.

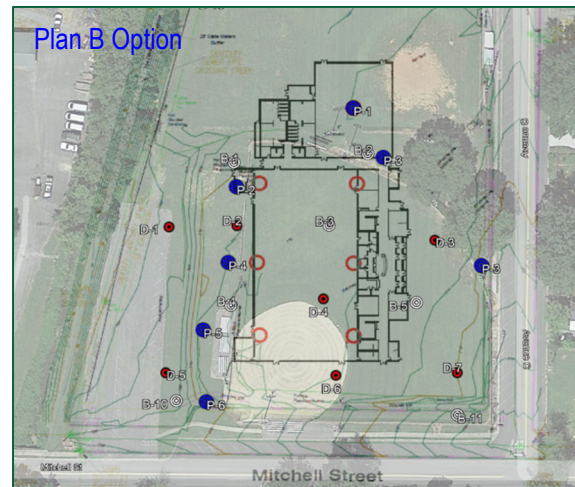
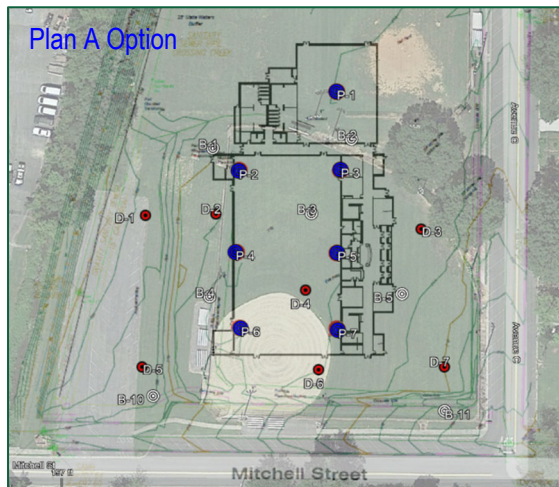
SCOPE OF SERVICES

Field and Laboratory Services

1. We will contact Georgia 811 for location of underground utilities. This is required by law. Also, we ask that the current property owner(s) provide any available information regarding the location of all underground utilities in the work areas. Geo-Hydro will not be responsible for damage to unmarked underground utilities. Please see the attached *Underground Utilities Fact Sheet* for more information.
2. We will perform six machine-drilled borings at select locations within the project area. The following page includes two aerial photographs with potential test boring locations shown in blue. Plan A includes the requested piezometer locations, which includes six locations within the existing baseball field. Plan B includes adjusted piezometer locations to avoid installing temporary piezometers within the baseball field. Each soil test boring will include standard penetration testing at select depth intervals in accordance with ASTM D1586. The borings will be extended to a target depth of 25 feet or to the depth of auger refusal, whichever occurs first. The borings will be converted to piezometers to measure the stabilized groundwater level more reliably. Temporary piezometers will be constructed by



installing 5 feet of 2-inch diameter, 0.010-inch slot well screen at the bottom of the borehole and installing a compatible sand pack around the screen extending approximately 2 feet above the screen. The remaining annular space will be backfilled with soil cuttings to the ground surface. Our lump sum fee allows for a total of **150** feet of soil test boring only.



3. After installation of the piezometers, we will return to the site the next day to purge and develop the wells. We will record additional groundwater level measurements one and two weeks after developing the wells. Additional measurements can be recorded upon request.
4. Test boring records will be prepared which provide standard penetration resistances, detailed soil descriptions, and groundwater conditions. Significant soil strata will be delineated, and partially weathered rock or auger refusal will be identified where encountered.
5. We will prepare a brief engineering report including the results of the supplemental test borings, the recorded groundwater levels, and recommendations for managing groundwater on a temporary and permanent basis, if necessary.
6. If requested after final groundwater check, we can abandon the piezometers. We will remove the PVC screen and riser. Then backfill the borings with any remaining soil cuttings and gravel to the ground surface. Alternatively, the wells can be left in place to allow for future groundwater measurements if needed. The cost for removing the wells has been included as an optional service in the *Cost Information* section of this proposal.

SCHEDULE

After receiving notice-to-proceed (NTP), Geo-Hydro will begin work immediately. Field drilling services will commence within 3 to 4 weeks of NTP and should be completed in 1 to 2 days, barring inclement weather. Preliminary information will be provided as it becomes available. A complete report will be provided within 3 weeks of completing the field work.

COST INFORMATION

Based on the Scope of Services outlined above, we will charge the following fees:

Base Scope Tasks	Lump Sum Fee
Piezometer Installation and Initial Stabilized Groundwater Check	\$8,400
Additional Groundwater Check (Each)	\$600
Piezometer Abandonment After Final Groundwater Check	\$1,000

In the event that additional work is required beyond the outlined scope of services, we will notify you prior to commencing with any additional work. A fee for additional work will be negotiated.


Our work may result in some rutting of the ground surface or damage to vegetation. If landscape repairs are necessary, we will hire a landscaping subcontractor. Landscape repair work will be charged at our cost plus 15 percent. No landscape repair or stabilization work will be performed without prior authorization from the City of Dalton. Alternatively, the city may use its own resources to perform landscaping repairs.


* * * * *

We are pleased to submit this proposal and look forward to the opportunity of working on this project. If this proposal is acceptable, we ask that you execute the attached agreement and return the original to us. If you have any questions concerning this proposal or any of our services, please call us.

Sincerely,

GEO-HYDRO ENGINEERS, INC.


Kaylin D. James, P.G.
Senior Project Geologist
kjames@geohydro.com


A. Marty Peninger, P.E.
Georgia Geotechnical Manager
mpeninger@geohydro.com

KDJ/AMP/211941.P1 - Piezometers - Dalton Aquatic Center - Alternate Site - Geotechnical Proposal

AGREEMENT

Project Name: Supplemental Piezometer Installation - New Aquatic Center

Project Location: John Davis Recreation Center - Dalton, Georgia

Proposal Number: 211941.P1 Date: January 28, 2022

The Client, as identified and defined below, engages Geo-Hydro Engineers, Inc. to provide the services on the Project as detailed in the proposal previously provided to the Client, the terms of which are incorporated herein and made a part of this Agreement. The general terms and conditions on the following pages are likewise incorporated herein and are explicitly made part of this Agreement.

This Agreement is entered into this _____ day of _____, _____ between

Geo-Hydro Engineers, Inc. (“Consultant”) and _____ (“Client”).

GEO-HYDRO ENGINEERS, INC.

Client Firm Name

Signature of Authorized Agent

Signature of Authorized Agent

Print Name

Print Name

Title

Title

Please complete information in box

Billing Entity Name _____	
Individual to Receive Invoices _____	
Email address _____	Phone No. _____
Street Address _____	
City and State: _____	



TERMS AND CONDITIONS OF SERVICE

A. STANDARD OF CARE.

Services under this contract will be performed by Consultant in accordance with that degree of care and skill ordinarily exercised under similar conditions by members of Consultant's profession practicing in the same locality.

B. CERTIFICATION.

Consultant may employ sampling procedures during the course of the work. Client acknowledges that such procedures indicate actual conditions only at the precise locations and elevations from which samples were taken. Client further acknowledges that, in accordance with the generally accepted construction practice, Consultant shall make certain inferences based on the results of sampling and any related testing to form a professional opinion of conditions in areas beyond those from which samples were taken. Client acknowledges that despite proper implementation of sampling and testing procedures, and despite proper interpretation of their results, Consultant cannot guarantee the existence or absence of conditions which it may infer to exist. Client further acknowledges and agrees that Client shall not cause any resolution of a dispute, including, but not limited to, payment or settlement, contingent upon Consultant's certification of certain conditions, without first receiving Consultant's written certification regarding those conditions.

C. WARRANTIES.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, CONSULTANT MAKES NO WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO CONSULTANT'S WRITTEN REPORTS, FINDINGS, OPINIONS, OR SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

D. EXISTING CONDITIONS.

Client agrees that subsurface explorations and geotechnical or environmental engineering evaluations are subject to naturally occurring and/or man-made soil and other conditions which cannot always be discovered or anticipated and that a potential exists for such phenomena to impact the Project in ways for which Consultant cannot be responsible. Client shall disclose, at least 7 days before any scheduled inspections by Consultant, the presence and location of all known man-made or naturally occurring objects which could be affected by or affect field tests or borings to be performed by Consultant.

Client acknowledges and agrees that Consultant has neither created nor contributed to the creation or existence of any irritant, pollutant, or hazardous, radioactive, toxic, otherwise dangerous or harmful substance that may exist at the site, or dangerous conditions resulting therefrom. Client further acknowledges that Consultant's sole role is to provide a service intended to benefit Client and that Consultant is performing no function at or association with the site that would classify Consultant as a generator, disposer, treater, storer, coordinator, handler, or transporter of hazardous materials.

(i) SAMPLING OR TEST LOCATION.

Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of the site for the accurate horizontal and vertical locations of tests. Field tests described in a report or shown on sketches are based upon information furnished by others or estimates made in the field by Consultant's representatives. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated.

(ii) HAZARDOUS SUBSTANCES.

Client agrees to advise Consultant, in writing, of any hazardous substances on or near the site within 24 hours after Client learns about the presence of such hazardous substances. In the event that test samples obtained contain substances hazardous to health, safety, or the environment, these samples shall remain the property of the Client. Likewise, any equipment which becomes contaminated and cannot be reasonably decontaminated shall become the property and responsibility of Client. Such samples or equipment will be delivered to Client. Client agrees to pay transportation costs for samples and equipment and the fair market value of such contaminated equipment upon request. Exploratory activities may expose soil and/or ground water considered to be hazardous by local and/or state and/or federal agencies. Consultant agrees to contain such materials in a manner approved by Consultant both during and at the completion of Consultant's field activities. Client understands and agrees that Client, and not Consultant, is responsible for the storage or disposal of hazardous materials or suspected hazardous materials brought to the surface during Consultant's exploratory activities.

(iii) DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Client also agrees that the discovery of unanticipated hazardous materials could make it necessary for Consultant to take immediate measures to protect human health, safety, or the environment. Consultant agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages Consultant to take any and all measures that in Consultant's professional opinion are justified to preserve and protect the health and safety of Consultant's personnel, and Client agrees to compensate Consultant for the additional cost of such work. In addition, Client waives any claim against Consultant, and agrees to indemnify, defend, and hold Consultant harmless from any claim or liability for injury, loss or perceived loss arising from Consultant's encountering of unanticipated hazardous materials or suspected hazardous materials. Client acknowledges that discovery of hazardous materials or suspected hazardous materials may lead to a temporary or permanent diminution of property value, and/or may cause delays in or otherwise affect completion of the real estate transaction Client now contemplates.

E. AQUIFER CONTAMINATION.

Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading hazardous materials off-site. Because nothing can be done to eliminate the risk of such an occurrence, and when subsurface sampling is a part of the work which Consultant will perform on Client's behalf, Client hereby waives any claim against Company, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss which may arise as a result of alleged cross-contamination caused by sampling. Client further agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of such claim, including, but not limited to, any attorneys' fees and expenses incurred by Consultant, in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

F. SAMPLES, DATA AND RECORDS.

Consultant shall be the sole owner of any and all data gathered by Consultants or reports prepared by Consultant. No entity or individual, other than Consultant, its representatives, or Client, may use or rely upon any data collected by Consultant or reports prepared by Consultant. Except as expressly set forth in this Agreement, Consultant and Client do not intend the benefits of this Agreement, including, but not limited to, the samples, data, and records created by Consultant, to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or

cause of action in favor of any such third party, against either Consultant or Client.

Routine test specimens will be discarded immediately upon completion of tests. Consultant shall retain drilling samples of soil or rock for a period of ninety (90) days following submission of Consultant's report to Client. If Client requests a longer period of storage, Consultant will retain test specimens or drilling samples for an agreed upon time period and fee. Records relating to services hereunder shall be maintained by Consultant for at least three (3) years following completion of Consultant's services.

G. ENTRY.

Client shall provide Consultant, its representatives, and equipment with right of entry on to the Project site. Consultant will endeavor to minimize damage to the land upon which the project is located, however Consultant shall not be under any duty or responsibility whatsoever to restore the Project site to its condition prior to performance of any tests or borings unless a separate agreement to do so is acknowledged in writing with Client. Unless otherwise indicated, Consultant's scope of service contains no provision for backfilling boreholes, test pits, or other exploration holes created to facilitate testing. Client hereby acknowledges that, unless some other arrangement is made in writing between Client and Consultant, Consultant cannot be held liable for any injuries or damages that may occur for Consultant's failure to perform services not included in the Proposal or this Agreement. Client further acknowledges that testing operations may result in damage to certain landscaping or improvements, due to the tests themselves, disposal of cuttings or ground water, movement of equipment, or due to other cause(s) that can commonly occur and are outside Consultant's control. Consultant will attempt to avoid causing damage, but Client understands and acknowledges that Consultant cannot guarantee damage will not occur and, accordingly, Client agrees to waive any claim against Consultant and to hold harmless, indemnify, and defend Consultant for any claim alleging injury or damage as a consequence of unfilled exploration holes on the site or any other disturbance to natural conditions of or any improvements on the site. Any costs of such restoration shall be added to our compensation pursuant to an agreed-upon price and terms set forth in a separate written agreement entered into between Consultant and Client.

H. FIELD MONITORING AND TESTING.

Whenever Consultant's personnel make on-site observations of materials and/or services provided by a contractor engaged by Client (the "Contractor"), Client agrees that Consultant is not responsible for the Contractor's means, methods, techniques, sequences or procedures of construction. Client acknowledges and agrees that the field services provided by Consultant shall not relieve the Contractor of his responsibilities for performing the work in accordance with the plans and specifications. The words "monitoring," "supervision," "inspection," or "control" mean the periodic observation of the work and the conducting of tests by Consultant to verify substantial compliance with the plans, specifications, and design concepts for the Project. Continuous or full-time monitoring does not mean that our personnel are observing placement of all materials or that we assume any responsibility or liability for placing or directing placement of materials.

I. SAFETY.

During the provision of observations or monitoring services at the job site during construction, Client agrees that in accordance with the generally accepted construction practice, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations. These requirements will apply continuously and are not limited to normal working hours. Any monitoring of the contractor's procedures conducted by

Consultant does not include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

J. FREEDOM TO REPORT.

It is contemplated that, during the course of this engagement, Consultant may be required to report on the past or current performance of others engaged or being considered for engagement directly or indirectly by Client and to render opinions and advice in that regard. Those about whom reports and opinions are rendered may, as a consequence, initiate claims of libel or slander against Consultant and its present or former principals, officers, shareholders, directors, agents, representatives, consultants, successors, insurers, and attorneys (the "Consultant Representatives"). To help create an atmosphere in which Consultant's personnel feel free to express themselves candidly, Client agrees (1) to waive any claim against the Consultant Representatives and (2) to defend, indemnify, and hold harmless the Consultant Representatives from any claim or liability for injury or loss allegedly arising from professional opinions rendered by Consultant to Client or Client's agents, including, but not limited to, claims for slander or libel. Client further agrees to compensate the Consultant Representatives for any time spent or expenses incurred by the Consultant Representatives in defense of any such claim, in accordance with Consultant prevailing fee schedule and expense reimbursement policy. Client acknowledges that Client and/or Consultant may be required by local, state, and/or federal statute and/or regulations to report the discovery of hazardous materials to a government agency, and that Consultant, when practical, will do so only after notifying Client. Client waives any cause of action, claim, suit, or demand associated with Consultant's compliance with its duties to report as required by local, state, and/or federal laws and regulations.

K. PAYMENT.

Client agrees to pay Consultant in full for all services provided by Consultant to Client. Time is of the essence regarding payment of Consultant's invoices. Client's obligation to pay Consultant is not dependent upon Client's ability to obtain financing, approval of any governmental or regulatory agency, or upon Client's successful completion of the Project. Consultant reserves the right to submit progress invoices to Client on a monthly basis and a final invoice upon completion of Consultant's work. Each invoice is due and payable to Consultant, by Client, immediately upon presentation. All amounts due to Consultant and not paid within thirty (30) days of the presentation of the invoice shall bear interest at the rate of eighteen percent (18%) per annum (or the maximum permissible rate allowed by law) until paid in full.

If any obligation of Client hereunder is collected by legal proceeding, including, but not limited to, a demand letter, lawsuit, arbitration, and/or mediation, Client shall pay to Consultant, in addition to the amount due, all Costs of Collection (as defined below), including, but not limited to, fifteen percent (15%) of the total amount due by Client to Consultant as reasonable attorney's fees as well as all costs incurred by Consultant if the legal proceeding does not result in a lawsuit or arbitration proceeding, and thirty percent (30%) of the total amount due by Client to Consultant as reasonable attorneys' fees as well as all court costs incurred by Consultant if the legal proceeding results in a lawsuit or arbitration proceeding. "Costs of collection" shall include, but are not limited to, the hourly cost to Consultant for employee's time expended in collection efforts.

L. TERMINATION.

In the event that Client requests termination of the work prior to completion, Consultant reserves the right to complete such analysis and records as are necessary to place Consultant's files in order and to complete a report on the work performed to date. Client acknowledges and agrees that the amount of damages that Consultant will sustain in the event Client terminates this Agreement prior to Consultant's completion of its work required by the proposal and this Agreement will be uncertain or difficult to ascertain. As such, Client agrees that in the event Client terminates this Agreement prior to Consultant's completion of the work required by the proposal and this Agreement, Client shall be liable to Consultant for liquidated damages in the amount equal to thirty percent (30%) of all charges incurred as of the date of Client's termination of the Agreement (the "Liquidated Damages"). Client

acknowledges and agrees that the foregoing Liquidated Damages do not represent a penalty, but rather, represent a good faith pre-estimation by the parties of the damages that would be incurred by Consultant.

M. PROFESSIONAL LIABILITY.

Client agrees that the liability of Consultant and its principals, officers, shareholders, directors, agents, representatives, consultants, successors, insurers, and attorneys, to Client due to any negligent professional acts, errors or omissions, or breach of contract will be limited to an aggregate of \$50,000.00 or Consultant's total fee, whichever is greater. If Client prefers to have higher limits of professional liability, Consultant agrees to increase the limit up to a maximum of the available professional liability insurance proceeds at the time of judgment or settlement upon Client's written request at the time of accepting Consultant's proposal, providing that Client agrees to pay an additional consideration of ten percent of Consultant's total fee, or \$500.00, whichever is greater. The additional charge for the higher liability limit is because of the greater risk assumed by Consultant and is not a charge for additional professional liability insurance.

Consultant does not assume any responsibilities, duties, or obligations of Client or any other entity or individual. Consultant's performance shall not be considered to reduce, eliminate, abridge, or abrogate, any responsibilities, duties, or obligations of any other party. Consultant is not responsible for the design or construction of the project or the failure of any party to perform in accordance with the plans and specifications for the Projects or any of Consultant's recommendations or instructions.

N. INDEMNIFICATION.

Client shall indemnify and hold harmless Consultant and its officers, directors, agents, and employees from any loss, damage, or liability, including, but not limited to, Consultants' attorneys' fees and costs, resulting from, relating to, or arising out of the following: (i) subsurface conditions, damage to subsurface structures, whether owned by Client or any third party, the presence or location of which were not revealed to Consultant by Client in writing at least 7 days prior to the commencement of Consultant's performance; (ii) any alleged cross-contamination caused by Consultant's sampling; (iii) unanticipated hazardous materials discovered during the course of Consultant's work; (iv) any damage to Consultant's equipment or personnel as a result of actions engaged in by the Contractor; or (v) any alleged aquifer cross-contamination caused by Consultant's sampling.

O. CONFIDENTIALITY.

Consultant agrees to keep confidential and not to disclose to any person or entity, other than Consultant's principals and employees, any data or information not previously known to and generated by Consultant or furnished to Consultant and marked CONFIDENTIAL by Client ("Confidential Information"). These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency, arbitrator, or other legitimate authority, or if disclosure is reasonably necessary for Consultant to defend itself from any legal action or claim.

P. NON-CIRCUMVENTION.

Each party agrees that the information disclosed pursuant to this Agreement, including, but not limited to, any Confidential Information, will be used solely and exclusively for the purpose of Consultant providing the services on the Project as detailed in the proposal. Each party agrees that it shall not seek to circumvent the other or make use of the other's Confidential Information or trade secrets, including, but not limited to, its relationships with any third-party service providers to enhance their own business in any way. Any

Confidential Information disclosed pursuant to this Agreement will not be used by the receiving party to generate revenues nor to create other commercial arrangements without the prior written consent of the disclosing party.

Q. GOVERNING LAW; VENUE.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed and construed by the laws of the State of Georgia, and Venue shall lie in the State of Georgia, Cobb County, for all causes of action under this Agreement.

R. SEVERANCE; SURVIVAL.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

S. EXECUTION.

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall together constitute one document. In the event one or more of the parties intends to sign and deliver this Agreement by facsimile transmission, ".pdf", or "jpeg," each party agrees that the delivery of the Agreement by facsimile, ".pdf", or "jpeg" shall have the same force and effect as delivery of original signatures, and each party may use such facsimile, ".pdf", or "jpeg" signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent that an original signature could be used.

T. REPRESENTATIONS.

Client represents and warrants that it has full authority to enter into this Agreement and to consummate the transactions contemplated herein, and that this Agreement is not in conflict with any other Agreement to which Client is a party or by which it may be bound.

U. MISCELLANEOUS.

This instrument constitutes the entire agreement of the parties. There are no terms or conditions except those set forth herein. This Agreement may not be modified, altered, or amended except in a subsequent written instrument executed by each of the parties which refers to this Agreement and specifies the amendment made. No waiver of any breach of this Agreement shall be deemed or considered a waiver of any other or subsequent breach. Paragraph headings are used to facilitate reference to the various provisions and do not affect the meaning or construction of any provision. This Agreement is governed by the laws of the State of Georgia.

Fact Sheet Underground Utilities

Geo-Hydro's work often includes drilling below the ground surface to evaluate subsurface materials. One of our biggest concerns is that we may accidentally encounter underground utilities which may create a safety hazard for our personnel and others or result in a loss of service. Location of underground utilities prior to our work is important to all parties. Unfortunately, location of underground utilities is a difficult task, and accurate location of underground utilities is often not possible.

Geo-Hydro is required by Georgia law to contact the Utilities Protection Center (UPC) prior to drilling. The UPC requires at least 72 hours prior notification. The UPC contacts member utilities, and the member utilities dispatch utility locators. Normally the utility locators will not locate underground utilities on private property, and will only locate utilities from the main service line to the property owner's meter. It is not uncommon for utility locators to improperly locate underground utilities for a variety of reasons.

Geo-Hydro requires that the property owner provide clearly marked locations on the ground of any underground utilities in the work area. If necessary, Geo-Hydro can refer the owner to companies that provide underground utility location services. Alternatively, Geo-Hydro can hire the utility location company and pass this cost through to our client.

Private underground utility location companies do not guarantee that they have located all underground utilities or that underground utilities have been accurately located. In fact, some underground utilities (e.g., irrigation lines, non-metallic lines, etc.) simply cannot be located using non-destructive techniques.

Geo-Hydro will make reasonable efforts to avoid damaging underground utilities that are clearly marked in the field. Due to the uncertainties of locating underground utilities, Geo-Hydro cannot be responsible for damage to unmarked underground utilities. Since Geo-Hydro's work is being performed for the benefit of its client, the client must accept the risk that Geo-Hydro's work could result in damage to underground utilities. As such, it is ordinarily the responsibility of Geo-Hydro's client to accept the responsibility for repairing damage to unmarked underground utilities unless that responsibility has clearly been transferred to another party.