

PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF JOSHUA, TEXAS, AND
MAS CONSULTING ENGINEERS, LLC

THIS PROFESSIONAL ENGINEERING SERVICES AGREEMENT ("Agreement") is made and entered by and between the CITY OF JOSHUA, TEXAS, hereinafter referred to as "City," and MAS CONSULTING ENGINEERS, LLC, hereinafter referred to as "Engineer," to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City Council of City desires to engage the services of Engineer to provide review and professional services in accordance with the Scope of Services, as referenced and defined herein; and

WHEREAS, Engineer desires to render such services for City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. ENGAGEMENT

City hereby agrees to retain Engineer to serve as the City's engineer for the Project referenced in the Scope of Services, and Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. SCOPE OF SERVICES

The Parties agree that Engineer shall perform such services as are further described in Exhibit A, attached hereto and incorporated by reference (collectively "Scope of Services"). The Parties understand and agree that deviations or modifications in the Scope of Services may be authorized from time to time by City, but said authorization must be made in writing.

III. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon the execution of this Agreement by City and Engineer. Notwithstanding the termination of this Agreement, Engineer shall be permitted to continue administration of any third party agreements, if any, commenced prior to termination of this Agreement, and to recover any compensation due Engineer for services performed in accordance with Section IV of this Agreement.

IV. COMPENSATION AND EXPENSES

Engineer shall be paid for performance of the Scope of Services set forth in Exhibit A, in accordance with the compensation schedule set forth in Exhibit B, attached hereto and incorporated by reference. Engineer is entitled to payment in accordance with Exhibit B and any payment in excess of those amounts referenced in this Agreement shall only be made upon approval of City.

V. INSURANCE

Engineer agrees to meet all insurance requirements, and to require all parties who perform work for Engineer to meet all insurance requirements, as set forth in Exhibit C to this Agreement, attached hereto and incorporated by reference.

VI. INDEMNIFICATION

TO THE EXTENT AUTHORIZED BY LAW, ENGINEER AGREES TO INDEMNIFY AND HOLD CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT FROM CITY ARISING OUT OF OR OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW BY ENGINEER, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OF CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VII. INDEPENDENT CONTRACTOR

Engineer covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of

respondent superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

VIII. ASSIGNMENT AND SUBLETTING

Engineer agrees that this Agreement shall not be assigned without the prior written consent of City, except to an Affiliate of Engineer. "Affiliate" shall mean (1) any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) Engineer, including, without limitation, any parent corporation controlling Engineer or any subsidiary that Engineer controls; (2) the surviving corporation resulting from the merger or consolidation of Engineer; or (3) any person or entity which acquires all of the assets of Engineer as a going concern. Engineer shall be permitted to enter into subcontracts for performance of portions of the Scope of Services; however, Engineer shall not subcontract the entirety of the Scope of Services to a single subcontractor without City's express written consent. Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to City as provided by this Agreement.

IX. AUDITS AND RECORDS

Engineer agrees that City or its duly authorized representatives shall, until the expiration of three (3) years after termination under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer agrees that City shall have access during normal working hours to all necessary Engineer's facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Engineer reasonable advance notice of intended audits.

X. TERMINATION

The Parties agree that City shall have the right to terminate this Agreement upon thirty (30) days' written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, or other items prepared by Engineer in connection with this Agreement. In the event of termination by City, Engineer shall be compensated in accordance with Section III of this Agreement with respect to any third-party agreements under administration by Engineer at the time of termination.

XI. COMPLETE AGREEMENT

This Agreement, including the Exhibits lettered A through C, constitute the entire agreement by and between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings.

XII. AMENDMENTS

Any amendments to this Agreement may be made at any time upon agreement by City and Engineer.

XIII. MAILING OF NOTICES

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Joshua, Texas
Attn: Mike Peacock, City Manager
101 S. Main Street
Joshua, TX 76058

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

MAS Consulting Engineers
2702 SE Loop 820
Fort Worth, Texas 76140

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted or otherwise delivered by the sending party.

XIV. AUTHORITY TO SIGN

The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

XV. MISCELLANEOUS

A. **Exemption from Competitive Bidding.** This is an agreement for professional services, and is therefore exempt from any competitive bidding requirements of City.

B. **Paragraph Headings.** The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

C. Agreement Interpretation. This is a negotiated Agreement, and should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party. Further, in the event of any dispute regarding this Agreement, the Parties agree to submitting such dispute to nonbinding mediation prior to the institution of any litigation in a court of competent jurisdiction.

D. Venue/Governing Law. The Parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Johnson County Texas. Exclusive venue shall lie in Johnson County, Texas.

E. Successors and Assigns. City and Engineer and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

F. Severability. In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

G. Effective Date. This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

SIGNED on the date indicated below.

[Remainder of Page Intentionally Left Blank]

(MAS Consulting Engineers, LLC)

DATE: 5/18/2023

By: [Signature]
Name: Miguel Angel Sanchez
Title: President

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Tarrant §


This instrument was acknowledged before me on the 18 day of May, 2023, by Miguel Sanchez, the President of ENGINEER, on behalf of said entity.



[Signature]
Notary Public, State of Texas

CITY OF JOSHUA, TEXAS

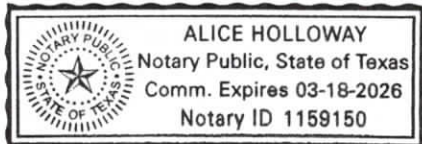
DATE: 5/19/2023

By: 
Name: Mike Peacock
Title: City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

This instrument was acknowledged before me on the 19 day of May, 2023, by Mike Peacock, the City Manager of the City of Joshua, Texas, on behalf of said City.




Notary Public, State of Texas

Exhibit A
Scope of Services

I. PROJECT DESCRIPTION

The subject site consists of approximately 3.6 acres located at 1080 South Broadway Street in Joshua, Texas 76058. Located approximately 300 feet west of the intersection of State Highway 174 and Mountanaire Road, the site is a vacant lot with an asphalt drive bisecting the first 600 feet of the property. The city desires to develop a commercial business park that will consist of approximately 20 "pods", open recreation areas, food truck parking/staging areas along with drives aisle and parking associated with the development. This scope of services is for the preparation of a Final Site Plan with input from the client and in accordance with the City of Joshua development standards and the clients and their representatives. Concurrently, MAS will prepare documents including a set of Site Civil Construction Plans and other special services.

II. GENERAL REQUIREMENTS

- A. Specific design requirements shall be obtained from the City of Joshua Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B. Consultant shall coordinate with the utility companies, including, but not limited to franchised utilities, Johnson County Special Utility District, pipeline owners, TxDOT, or any other entity which has facilities within or adjacent to the Project, any and all exposure, removal, and/or relocation work necessary for implementation of Project. Preparation of additional plans and documents necessary to obtain any permits required by any of these entities are available as an additional service.
- C. Each time the Consultant submits plans and/or specifications to City, an electronic submittal will suffice, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City.

III. TASK SUMMARY – BASIC SERVICES

A. Data Collection

2. Research and Data Collection

a. Research and Data Collection

- 1. City to provide as-built plans for existing utilities and street improvement, plats, right-of-way maps, existing easement information, contour maps, and other features within and pertaining to the project area.**
- 2. Consultant to obtain record information and review existing materials, reports and maps obtained from the City that are relevant (as determined by City and Consultant) to this Project and perform field investigations necessary to evaluate proposed improvements. Coordinate with franchise utility companies and the City of Joshua to obtain information on existing and proposed facilities in the Project area. The information and data obtained is to be used in the development of construction drawings and specifications for this project and includes the following:**
 - Updated sanitary sewer master plan and sizing.**
 - Current zoning maps.**
 - Available Geographic Information Systems (“GIS”) information including water, wastewater, storm sewer, property ownership, plainmetrics, contours, aerial photography, floodplain, zoning, and other information applicable to the project.**
 - Existing locator maps and plans for future franchise utilities.**
 - Current plans for proposed roads.**
 - Planned Developments for land within the service area.**
 - Existing maintenance and/or inspection records.**
 - City of Joshua Zoning Ordinance.**
 - Texas Commission for Environmental Quality (TCEQ) and Johnson County Special Utility District’s sanitary sewer design criteria.**
 - Plans for proposed improvements in the project area.**

B. PLANNING DESIGN SERVICES

1. Design Development

- a. **Site Plan Development** - The Consultant will prepare a conceptual site plan using a reconciled boundary and using the concept plan provided by the City. The consultant understands that the subject property contains portions of industrial and restricted commercial within the Joshua Station Overlay District. Variances and/or zoning changes may be required to construct this project. This scope of services includes coordination and updates to the site plan, accordingly.
- b. **Pre-Development Meeting** - The consultant will submit the preliminary documents to the City of Joshua's Development Services Department to schedule a Pre-Submittal Meeting. In addition, the consultant will attend and document the findings of the predevelopment meeting and update the site plan accordingly. A preliminary drainage assessment will be conducted to determine to the scope of the drainage downstream assessment/ drainage study required per the site plan checklist. The scope of the drainage downstream assessment/drainage study will be determined at the pre-development meeting by the city engineer after analyzation of the preliminary drainage assessment..

C. FINAL SITE PLAN

1. **Final Site Plan Preparation**- The consultant will review and prepare the documents required for a Site Plan Submittal. The site plan will be designed to meet the requirements of the City of Joshua development and engineering standards. Site Plan to include information mentioned under Article 3 Section 3.3, of the City Zoning Ordinance, if applicable to the project.
2. **Opinion of Probable Construction Cost** - At the time of submittal of the Conceptual Design Plans, the Consultant shall prepare an estimate of construction quantities and develop preliminary statement of opinion of probable construction cost for construction items included in the civil construction plans. Electrical, mechanical and architectural construction costs to be provided by others.
3. **Utility Coordination** - Upon approval of the Conceptual Design Plans, Consultant shall supply Plans, in PDF format to the city for distribution to utility owners that may be affected this project.

Consultant shall also attend one utility coordination meetings for the Project, upon request by the City.

D. FINAL DESIGN / CONSTRUCTION PLANS – At such time as Consultant is directed by the City, Consultant shall prepare Final Design / Construction Plans. Final Design Plans shall be consistent with the content and format of the Conceptual Design Plans and, in addition, shall include the following:

1. **Design** – At such time as the Consultant is directed by the City, Consultant shall prepare and submit an electronic copy of the sealed plans to the city for review. At the time of submittal of the Final Design Plans, any supporting studies and/or calculations (i.e. flood studies, structural calculations) shall be submitted for review by the City. Final Design Plans shall include, at a minimum, the following information:
 - a. Cover Sheet
 - b. General Notes
 - c. Quantities
 - d. Existing Conditions
 - e. Site Plan
 - f. Demolition Plan
 - g. Typical Sections
 - h. Dimension Control Plan
 - i. Paving Plan
 - j. Jointing Plan
 - k. Grading Plan
 - l. Existing Drainage Area Map
 - m. Proposed Drainage Area Map
 - n. Storm Drain Plan & Profile
 - o. Water Line Plan
 - p. Sanitary Sewer Plan & Profile
 - q. Signing and Pavement Markings
 - r. Erosion Control Plan

2. **Final Earthwork Calculations** - Earthwork shall be calculated by comparing the Triangular Irregular Surfaces (TIN) of the final and existing surfaces bounded by the limits of proposed improvements.

3. **Details and Standards** – Appropriate details and standards shall be compiled and inserted into the plans following the section in which the detail or standard is applied.

4. **Johnson County Special Utilities District Plan Submittal** – Consultant will coordinate and submit plans according to the

standards set by TCEQ and JCSUD. Permit and Review fees shall be reimbursed by the City to the Consultant in totality with a 5% mark up.

5. **Opinion of Probable Construction Cost (OPPC)** - Consultant shall develop and submit a final estimate of Opinion of Probable Construction Cost.
6. **Utility Coordination** - Upon completion of the Final Design / Construction Plans, Consultant shall supply Plans, in PDF format to the city for distribution to utility owners that may be affected this project. Consultant shall also attend one utility coordination meetings for the Project, upon request by the City.

E. COMPLETION OF RECORD DOCUMENTS (AS-BUILTS) – The Consultant shall prepare a preliminary set of construction Record Documents for City review based on information received from the Construction Contractor within thirty days of substantial completion of construction and provide to the City the items (and quantities as stated). Once approved the Consultant shall prepare and submit a final set of construction Record Documents in digital and physical form to the City.

IV. TASK SUMMARY, SPECIAL SERVICES

A. GEOTECHNICAL SERVICES - Consultant will provide a Geotechnical Engineering Report, no later than the conceptual design plan submittal, containing the following:

1. **Exploration and Sampling** – Consultant shall provide a subgrade investigation, in accordance with City of Joshua Engineering Design Standards, Section 3 – Pavement and Subgrade Design Requirements. Borings shall extend ten (10) feet deep or until bedrock, whichever is shallower. Any additional borings may be required to supplement this scope.
2. **Laboratory Testing** – Consultant shall determine soil properties in accordance with City of Joshua Engineering Design Standards, Section 3 – Pavement and Subgrade Design Requirements. Which includes Moisture Content, Atterberg Limits, Percent Passing #200, Standard Proctor, Swell Tests at 200 psf, and Sulfate testing.
3. **Pavement Design** – Consultant shall recommend a flexible and rigid pavement section based in accordance with City of Joshua Engineering Design Standards assuming that the input values for the minimum sections are applicable. Included in task will be pavement

section alternates for both concrete and asphalt pavement with lime stabilized subgrades.

4. Geotechnical investigation for structures, retaining walls, utilities, and slopes are not included in this scope of work..

B. LANDSCAPING & IRRIGATION PLANS – The plan typically includes a map of the site, as well as specific details on the placement and selection of plants, trees, and other features. The goal of a landscaping plan is to create a cohesive and visually appealing outdoor environment that meets the needs of the property owner while also promoting sustainability and environmental responsibility while meeting city requirements.

The irrigation plan is detailed document that outlines the design and implementation of a system for delivering water to plants, trees, and other vegetation on the property. The plan typically includes a map of the site, as well as specific details on the placement and type of irrigation system components, such as sprinklers, valves, pipes, and controllers. The goal of an irrigation plan is to ensure that the landscape is properly watered, while also conserving water and promoting sustainability. The plan may also consider local regulations and water usage restrictions, as well as the property's budget and maintenance needs.

C. LIGHTING AND PHOTOMETRIC PLANS – The lighting plan is a detailed document that outlines the design and implementation of a lighting system for a property. The plan typically includes a map of the site, as well as specific details on the placement and type of lighting fixtures, such as floodlights, spotlights, and pathway lights. The plan may also consider the use of energy-efficient lighting technologies, such as LEDs, as well as the control systems that will be used to turn the lights on and off. The goal of a lighting plan is to provide adequate lighting for the property, while also enhancing the aesthetic appeal of the landscape and promoting safety and security.

D. CONSTRUCTION ADMINISTRATION – These services are intended to assist the City in administering the contract for construction, monitoring the performance of the construction Contractor, verifying that the Contractor's work is in substantial compliance with the contract documents, and assisting the City in responding to the events that occur during construction. Consultant shall provide Construction Administration Services as defined below.

1. **Pre-Construction Conference** – Consultant shall attend the preconstruction conference with the Contractor to review the Project

communication, coordination and other procedures and discuss the Contractor's general work plan and requirements for the Project.

2. **Review of Shop Drawings, Samples and Submittals** - Consultant shall coordinate with the City for the reviews of the Contractor's shop drawings, samples, materials, and other submittals for conformance with the design concept and general compliance with the requirements of the contract for construction. Consultant will log and track shop drawings, samples and submittals.
3. **Requests for Information** – Consultant will review the Contractor's requests for information or clarification of the contract for construction. Consultant will coordinate and issue responses to requests to the City. Consultant will log and track the Contractor's requests.
4. **Review of Contractor's Requested Changes** – Consultant shall review all Contractor-requested changes to the contract for construction. Consultant will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, Consultant shall prepare final change order documents.
5. **Site Visits** – Consultant shall periodically (four anticipated site visits) visit the project site during the construction phase and document construction progress.

V. **Additional Services not included in the existing 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:

- A. Construction Staking
- B. Restoring removed or damaged survey monumentation
- C. Environmental Services beyond those identified in the Scope of Services
- D. Preparation for and attendance at public meetings other than previously noted
- E. Title Research
- F. Traffic Counts
- G. Traffic Analysis
- H. Traffic Simulations

- I. Signal Warrant Studies
- J. Sampling or Testing for Hazardous Materials
- K. Structural Design other than previously noted
- L. Design of any storm drain main line capacity improvements that may be identified during the Conceptual Design task
- M. Design of any offsite drainage improvements
- N. Preparation of Multiple Bid Packages
- O. Architectural or Structural Services, (e.g. Dumpster Pads, Walls, etc.)
- P. Drainage Studies and/or Detention Pond Design and/or Analysis
- Q. Traffic Control Plan
- R. Bid Phase Services
- S. Project Manuals

Exhibit B
Compensation and Fees

I. Basic Services

A. Data Collection	\$ 4,300.00
B. Planning Design Services	
1. Design Development & Pre-Development Meeting	\$ 14,000.00
C. Final Site Plan	\$ 14,300.00
D. Final Design/ Construction Plans	\$ 40,000.00
E. Record Documents	\$ 3,000.00
<i>Total Basic Services (Lump Sum)</i>	<u>\$ 75,600.00</u>

II. Special Services

Geotechnical Services	\$ 6,900.00
B. Landscaping & Irrigation Plans	\$ 6,325.00
C. Lighting & Photometric Plans	\$ 9,200.00
D. Construction Administration (Estimated Cost Plus)	\$ 5,500.00
<i>Total Special Services (Cost Plus, Not-To-Exceed)</i>	<u>\$ 27,925.00</u>

III. Direct Expenses (Cost Plus, Not-to-Exceed)

<i>Total Direct Expenses (Cost Plus, Not-To-Exceed)</i>	<u>\$ 2,000.00</u>
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Project Budget, Grand Total (Not-To-Exceed) **\$ 105,525.00**

Exhibit C
Insurance Requirements

COVERAGE	LIMIT OF LIABILITY
Employer's Liability	\$1,000,000 per occurrence
General Liability	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate