

## PROFESSIONAL SERVICES AGREEMENT

This Agreement prepared on January 12, 2024 is by and between City of Stephenville with address at 298 W. Washington Street, Stephenville, Texas 76401 ("Client") and LJA Engineering, Inc. ("LJA"), who agree as follows:

Client engages LJA to perform professional services (the "Services") for the compensation set forth in one or more proposals or work authorizations (the "Proposal(s)") for one or more projects (the "Project(s)"). LJA shall be authorized to commence the Services upon execution of the Proposal(s) by the Client. Client and LJA agree that this Agreement, the Proposal(s), and any attachments herein incorporated by reference (the "Agreement") constitute the entire agreement between them.

**I. LJA'S RESPONSIBILITIES:** LJA shall perform or furnish the Services described in the Proposals, which shall be combined and attached as part of this Agreement. Where the terms or conditions of any Proposal conflict with those of Parts I-III contained herein, the Proposal shall control for the Services performed under that Proposal only.

**II. CLIENT'S RESPONSIBILITIES:** Client, at its expense, shall do the following in a timely manner so as not to delay the Services:

**1. INFORMATION/REPORTS:** Furnish LJA with all information, reports, studies, site characterizations, advice, instructions, and similar information in its possession relating to the Project.

**2. REPRESENTATIVE / ACCESS:** Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret and define Client's policies, and make decisions with respect to the Services, and provide LJA safe access to any premises necessary for LJA to provide the Services.

**3. DECISIONS:** Provide all criteria and full information as to requirements for the Project, obtain (with LJA's assistance, if applicable) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and participate in the Project to the extent necessary to allow LJA to perform the Services.

**III. COMPENSATION, BILLING, & PAYMENT:** Client shall pay LJA for Services as denoted in the applicable Proposal and in accordance with the standard rate schedule – Attachment B.

**IV. STANDARD TERMS AND CONDITIONS:** Attachment A.

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing and each of the undersigned parties has caused this Agreement to be duly executed. This Agreement contains a limitation of liability clause and the Client has read and consents to all terms.

**APPROVED FOR "CLIENT"**  
**CITY OF STEPHENVILLE**

**APPROVED FOR "LJA"**  
**LJA ENGINEERING, INC.**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Printed Name: Doug Svien

Printed Name: James S. Wiegert

Title: Mayor

Title: Senior Vice President

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

Attachments:  
A – Standard Terms and Conditions  
B – Standard Rate Schedule

## **ATTACHMENT A STANDARD TERMS AND CONDITIONS**

**1. STANDARD OF CARE.** The Services shall be performed with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. The Services are not subject to, and LJA cannot provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code, work authorization, requisition, or notice, except as provided herein.

**2. CHANGE OF SCOPE.** The scope of Services set forth in any Proposal is based on facts known at the time of execution of the Proposal, including, if applicable, Client Data (defined below). As the Project progresses, facts discovered, including, but not limited to, site conditions or the existence of differing subsurface or physical conditions, may indicate that the scope, pricing, or other terms must be redefined, and the parties shall reasonably cooperate to equitably adjust the scope, pricing, or terms of this Agreement accordingly.

**3. SAFETY.** LJA has established and maintains corporate programs and procedures for the safety of its employees. Unless included as part of the Services, LJA specifically disclaims any authority or responsibility for general job site safety and safety of persons other than LJA employees.

**4. DELAYS.** The Services shall be performed expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Where LJA is prevented from completing any part of the Services within the schedule provided under the Agreement due to delay beyond its reasonable control, the schedule will be extended in an amount of time equal to the time lost due to such delay so long as LJA provides written explanation of the delay to Client. Except with regard to payment of any amounts due LJA from any Services, neither party shall be liable to the other for any delays or failure to act, due to unforeseeable causes reasonably beyond the control of the party claiming such circumstances.

**5. TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon thirty (30) days written notice to the other party. In the event of termination, Client shall pay LJA for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination. In the event either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may suspend performance under this Agreement. In the event of a suspension of Services, LJA shall have no liability to the Client for delay or damage caused the Client because of such suspension of Services.

Before resuming Services, LJA shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of LJA's Services. LJA's fees for the remaining Services and the time schedules shall be equitably adjusted. Obligations under this Agreement, which by their nature would continue beyond the suspension or termination of this Agreement (e.g., indemnification), shall survive such suspension or termination.

**6. RELATIONSHIP WITH CONTRACTORS / REVIEW.** LJA shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors, but LJA specifically disclaims any authority to direct or supervise the means, methods, techniques, security or safety activities, personnel, compliance, sequences, or procedures of construction selected by Client's contractors. For Projects involving bid preparation, LJA may supply standard contract forms, templates, or other documents that will be executed between the Client and contractor(s). It is the Client's responsibility to review those documents and to obtain legal advice thereto. For Projects involving construction, Client acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the Project permits errors or omissions to be identified and corrected at comparatively low cost. Evaluations of Client's budget for construction and estimates prepared by LJA represent LJA's judgment as a design professional. It is recognized, however, that neither LJA nor Client have control over the cost of labor, materials, or equipment, the contractor's methods of determining bid prices, or competitive bidding, market, or negotiating conditions. Accordingly, LJA cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget or from any estimate of costs prepared or agreed to by LJA. Client agrees to hold LJA harmless from any claims resulting from performance of construction-related services by persons other than LJA and LJA shall not be responsible for the contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. In fulfilling its duties pursuant to the Agreement, Client permits LJA to elect to subcontract to others certain tasks in its scope of Services.

**7. INSURANCE.** LJA will maintain insurance coverage for Professional Liability, Commercial Liability, Auto, and Workers' Compensation in amounts in accordance with legal and business requirements. Certificates evidencing such coverage will be provided to Client upon request. For Projects involving construction,

Client agrees to require its construction contractor, if any, to include LJA as an additional insured on its policies relating to the Project. LJA's coverages referenced above shall, in such case, be excess over any contractor's primary coverage. Client shall require its construction contractor to include LJA as an indemnitee under any indemnification obligation of contractor to Client to the fullest extent allowed by law.

**8. PROJECTS WITH MULTIPLE CLIENTS.** When LJA undertakes a Project for multiple Clients, each Client on the Project is jointly and severally liable for payments for LJA's Services. If any Client fails to make timely payment to LJA, and the remaining Clients wish to continue the Project, the remaining Clients will promptly notify LJA in writing to continue the Project and their joint and several obligations shall remain the same. LJA, at its option, may suspend the remaining performance under this Agreement until all past due payments are made, and authorization to proceed and pay from all non-defaulting Clients is received, or continue work on the Project and invoice and collect from the remaining Clients any payment (including damages) of amounts past due and that become due.

**9. SITE CONDITIONS.** Hazardous, archaeological, paleontological, cultural, biological, or other materials, protected resources, unknown underground facilities, or other conditions ("Conditions") may exist at a site where there is no reason to believe they could or should be present. LJA and Client agree that the discovery of unanticipated Conditions constitutes a changed condition that may mandate a renegotiation of the scope of Services. LJA will notify Client should unanticipated Conditions be encountered. Client acknowledges and agrees that it retains title to all Conditions existing on the site and shall report to the appropriate public agencies, as required, any Conditions at the site that may present a potential danger to the public health, safety, or the environment. Client shall execute any manifests in connection with avoidance, containment, transportation, storage, or disposal of Conditions resulting from the site.

**10. INDEMNITY.** LJA shall indemnify Client from and against liability for damage to the extent that the damage is actually caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by LJA, LJA's agent, or another entity over which LJA exercises control.

**11. LIMITATION OF LIABILITY.** No employee or agent of LJA shall have individual liability to Client. Client agrees that, to the fullest extent permitted by law, LJA's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, LJA's negligence, errors, omissions, strict liability, or breach of contract, and whether claimed directly or by way of contribution, shall not exceed the total compensation received by LJA for the relevant work authorization or proposal under this Agreement. If Client desires a limit of liability greater than that provided above, Client and LJA shall include in Part III

of this Agreement the amount of such limit and the additional compensation to be paid to LJA for assumption of such additional risk.

**12. CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST REVENUES, LOSS OF USE, LOSS OF FINANCING, LOSS OF REPUTATION, LOST PROFITS, DELAYS, OR OTHER ECONOMIC LOSS ARISING FROM ANY CAUSE INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER CAUSE WHATSOEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY. REGARDLESS OF LEGAL THEORY, LJA SHALL BE LIABLE ONLY TO THE EXTENT THAT ANY DAMAGES SPECIFIED HEREIN ARE FOUND BY A FINAL COURT OF COMPETENT JURISDICTION TO HAVE BEEN THE SEVERAL LIABILITY OF LJA. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES THAT ARE INCONSISTENT WITH THIS PROVISION OF THE AGREEMENT ARE WAIVED.

**13. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such were originally prepared, or alteration of such without the written verification or adaptation by LJA for the specific purpose intended, shall be at the Client's risk. All title blocks and the engineer's seal, if applicable, shall be removed if Client provides deliverables in electronic media to any third party. Any modification of the plans will be evidenced on the plans and be signed and sealed by a licensed professional prior to reuse of modified plans. Client agrees that relevant analyses, findings, and reports provided in electronic media shall also be provided in hard copy and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. Client shall be afforded a period of thirty (30) days to check the hard copy against the electronic media. In the event that any error or inconsistency is found during that time, LJA shall be advised and the inconsistency shall be corrected at no additional cost to Client. Following the expiration of this notice period, Client shall bear all responsibility for the care, custody, and control of the electronic media. In addition, Client represents that it shall retain the necessary mechanisms to read the electronic media. Client agrees to indemnify and hold harmless LJA from all claims, damages, and expenses (including reasonable litigation costs) arising out of such reuse or alteration by Client or others acting through Client.

**14. CLIENT DATA.** Client or any third party designated by Client may provide information, reports, studies, site characterizations, advice, instructions, and similar information in its possession relating to the Project ("Client Data"). LJA may reasonably and in good faith rely upon the accuracy of Client Data and unless described as part of the Services, LJA is not required to audit, examine, or verify Client Data. However, LJA will not ignore the

implications of information furnished to LJA and may make reasonable inquiries if Client Data as furnished appears to be incorrect or incomplete. LJA makes no representations or warranties (express or implied) as the quality, accuracy, usefulness, or completeness of any Services to the extent LJA relies on Client Data. LJA, its affiliates, its officers, directors, and employees shall have no liability whatsoever with respect to the use of unreliable, inaccurate, or incomplete Client Data.

**15. ASSIGNMENT/BENEFICIARIES.** Neither party may assign this Agreement without the written consent of the other party. With the exception of such assignments, nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any. The Services may be performed by any affiliated company of LJA under its common insurance program.

**16. AMENDMENT, NO WAIVER, & SEVERABILITY.** This Agreement can be amended in writing and signed by the parties. No waiver by either party of any default by the other party in the performance of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character. The various terms, provisions, and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

**17. INDEPENDENT PARTIES.** Each party is an independent entity and is not a partner, agent, principal, or employee of the other party, unless otherwise agreed to by the parties in writing. Nothing in this Agreement shall restrict or otherwise prohibit either party or their respective affiliates in the conduct of their businesses.

**18. STATUTE OF LIMITATION.** To the fullest extent permitted by law, the parties agree that the time period for bringing claims under this Agreement shall expire one (1) year after Project completion.

**19. STATUTORY TERMS APPLICABLE TO STATE POLITICAL SUBDIVISIONS.** As required by Chapter 2252 of the Texas Government Code (the "Code"), and as such terms are defined therein, LJA is not listed on, nor does not do business with, "Companies" that are on the Texas Comptroller of Public Accounts' list of "Designated Foreign Terrorist Organizations." As required by Chapter 2271 of the Code, and as such terms are defined therein, LJA verifies that it does not, nor will it, "boycott Israel" through the term of this Agreement. As required by Chapter 2274 of the Code, and as such terms are defined therein, LJA hereby verifies that it does not, nor will it, "boycott energy companies," through the term of this Agreement. As required by Chapter 2274 of the Code, and as such terms are defined therein, LJA hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association," and will not discriminate against a firearm entity or firearm trade

association through the term of this Agreement. As required by Chapter 113 of the Texas Business & Commerce Code, and as such terms are defined therein, LJA is not owned by nor has the majority of stock or other ownership interest of the company held by (i) individuals who are citizens of China, Iran, North Korea, Russia or a "designated country", or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or a "designated country." LJA is headquartered in Houston, Texas.

**20. DISPUTE RESOLUTION.** The parties shall attempt to settle all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, by discussion between the parties' senior representatives. If any dispute cannot be resolved in this manner, within five (5) business days, the parties agree to refer such claims, disputes, and controversies to mediation by a mediator mutually agreed to and equally paid for by the parties before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. The mediator shall convene the mediation at the request of either party, and the mediation will last at such times and as long as the mediator reasonably believes agreement is probable. Notwithstanding the foregoing, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitation. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs including reasonable attorney's fees from the other party.

**21. LITIGATION SUPPORT.** LJA will not be obligated to provide expert witness or other litigation support related to its Services, unless expressly agreed in writing. In the event LJA is required to respond to a subpoena, inquiry, or other legal process related to the Services in connection with a proceeding to which LJA is not a party, Client will reimburse LJA for its costs and compensate LJA at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

**22. GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without giving effect to any conflict or choice of law rules or principles under which the law of any other jurisdiction would apply. Each party hereby submits to the jurisdiction of the federal and state courts located in the county of LJA's address and agrees that such courts shall be exclusive forum and venue for resolving any legal suit, action or proceeding arising out of or relating to this Agreement.

Ver.20OCT2023

**ATTACHMENT B**

<b>LABOR CATEGORY</b>	<b>BILLING RATES</b>	
	<b>Lowest</b>	<b>Highest</b>
Department Head (VP, Division Manager)	\$225.00	\$300.00
Senior Consultant	\$230.00	\$285.00
Director	\$200.00	\$285.00
Group Manager	\$195.00	\$265.00
Sr. Project Manager	\$190.00	\$260.00
Project Manager	\$135.00	\$210.00
Sr. Project Engineer	\$140.00	\$215.00
Professional Engineer (Project Engineer, APM)	\$120.00	\$195.00
Graduate/Design Engineer	\$ 90.00	\$140.00
Sr. Civil Designer	\$ 90.00	\$175.00
Civil Designer	\$ 80.00	\$140.00
Sr. Planner	\$130.00	\$195.00
Planner	\$ 85.00	\$150.00
Sr. Landscape Architect (Studio Lead)	\$130.00	\$175.00
Landscape Architect	\$100.00	\$165.00
Landscape Designer	\$ 85.00	\$140.00
Sr. Construction Manager	\$120.00	\$195.00
Construction Manager	\$100.00	\$155.00
Resident Project Representative	\$ 85.00	\$145.00
Construction Engineer	\$ 85.00	\$145.00
Construction Inspector	\$ 70.00	\$135.00
GIS Developer	\$105.00	\$190.00
GIS Analyst	\$ 75.00	\$125.00
Survey Project Manager	\$130.00	\$210.00
Project Surveyor	\$110.00	\$170.00
Survey Technician	\$ 75.00	\$155.00
3 Man Survey Crew	\$200.00	\$240.00
2 Man Survey Crew	\$160.00	\$200.00
Clerical (Admin. Assistant)	\$ 60.00	\$125.00
Intern	\$ 45.00	\$ 85.00

**Expert Witness**

Expert witness and certificate (merit or lender) duties will be billed at a rate of \$425.00/hour.

**Reimbursable Expenses**

In performance of the Scope of Services attached to the Project specific Proposal, the following types of expenses are not contemplated in the Total Proposal Fee. These are considered Reimbursable Expenses and LJA will be compensated for in accordance with the following:

1. Reproduction, out-of-town travel expenses, employee travel and mileage, and other non-labor charges directly related to the Project will be billed at cost plus ten percent.
2. Filing fees, permit fees, and other special charges which are advanced on behalf of the Client will be billed at cost plus ten percent.
3. Subcontracted services and other services by outside consultants will be billed at cost plus ten percent.
4. Vehicle mileage will be charged at the current IRS mileage rate per mile for all travel.
5. Sales tax as required by state law for surveying services will be billed at cost.

### **Payments**

Billings for Services rendered will be made monthly and payment is requested within fifteen (15) days of receipt of invoice. Unless special arrangements are made, a finance charge of one and one half percent (1.5%) per month will be added to unpaid balances more than thirty (30) days old as well as any costs of collection, including attorney's fees. LJA reserves the right to suspend work should invoices not be paid within the stated terms. Client affirms that the Services to be provided by LJA should not be subject to the addition of any sales tax, value added tax, stamp duty, wage withholding, or similar tax or withholding, including at the source of payment, and as such, requests that LJA not add any such taxes to its invoices. If applicable, Client shall provide LJA with appropriate exemption certificates. The amount of any excise, VAT, or gross receipts tax that may be imposed for professional services shall be added to the compensation as determined above. In the case where Client is obliged to make any deduction or withholding on account of any such addition, the amount paid to LJA by Client for any invoice shall be grossed up to the amount of the invoice so that any fees and other sums payable to LJA are not subject to such taxes.

This Rate Schedule is subject to annual change at LJA's discretion to reflect increases in costs of operation, inflation, etc.