

July 16, 2025
Project No.: 0070564.00

Ms. Toni Fisher, CPM
Assistant City Manager
CITY OF WILLOW PARK
120 El Chico Trail
Willow Park, Texas 76087

Re: Professional Landscape Architecture Services
WILLOW PARK FY26 GREEN RIBBON
Willow Park, Parker County, Texas

Dear Ms. Fisher:

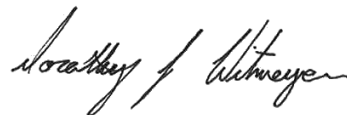
Westwood Professional Services, Inc. is pleased to submit this proposal to provide professional landscape architecture services relating to the referenced project. It is our understanding the project consists of landscape planting and irrigation plans for the award of \$400,000.00 in TxDOT Green Ribbon funding to be used along IH 20 at the intersection of Mikus Road, and the design and construction plans for a Gateway Monument.

Based on our preliminary discussions and the information received to date, our perception of the project is described in the attached documents:

- General Conditions of Agreement;
- Exhibit A – Scope of Services;
- Exhibit B – Compensation and Method of Payment;
- Exhibit C – Insurance; and
- Exhibit D - Concept

Westwood Professional Services, Inc. is pleased to have this opportunity to submit this proposal and look forward to working with you on this project. If the proposed agreement is acceptable to you as presented, please execute one copy of the agreement form and return one original copy to our office. If you have any questions or would like any additional information, please do not hesitate to call us at your convenience.

Sincerely,



Dorothy J. Witmeyer, P.L.A.

DJW/jmc

These **General Conditions of Agreement** for the **Willow Park FY26 Green Ribbon** (the “**Project**”), together with the attached Exhibits and any amendments hereto, are an agreement (collectively, the “**Agreement**”) between **City of Willow Park** (“**Client**”), a **Texas Governmental Entity**, and **Westwood Professional Services, Inc.** (“**Westwood**”), a Texas corporation. Client and Westwood are each a “**Party**” and collectively, the “**Parties**” to this Agreement dated **July 16, 2025** (the “**Effective Date**”).

1.01 BASIC AGREEMENT

In exchange for the mutual covenants and promises contained in this Agreement and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree that Westwood shall provide, or cause to be provided, the professional services (the “**Services**”) set forth in this Agreement for Client in exchange for payment contemplated herein. In addition, Westwood shall provide drawings, specifications, plans, designs, work product, and other items and materials as described in this Agreement (the “**Deliverables**”).

2.01 SCOPE AND RESPONSIBILITIES

- A. *Westwood.* Westwood shall perform Services for the Project as set forth in the Scope of Services & Fee Proposal, attached and incorporated by reference herein as **Exhibit “A”**, in accordance with the terms of this Agreement. Westwood reserves the right to augment its staff with employees and/or consultants as it deems appropriate to assist in the performance of Services for the Project due to Project logistics, scheduling issues, and/or market conditions. The Deliverables and all other documents, software, data, intellectual property, and other work products created, developed, produced, delivered, performed, and/or provided by Westwood, whether in hard copy or in electronic form, are instruments of service (“**Instruments of Service**”) for this Project, whether the Project is completed or not.
- B. *Client.* In addition to the other responsibilities described in this Agreement and/or imposed by law or in equity, Client shall have the following obligations:
 - 1. Provide all information and criteria as to Client’s requirements, objectives, and expectations for the Project, including all numerical criteria that Client expects Westwood and its consultants, if any, to meet, including all standards of development, design, and/or construction.
 - 2. Provide Westwood all previous studies, plans, and/or other documents pertaining to the Project, including but not limited to the contract with the property owner (the “**Prime Contract**”), if any, and all applicable data requested by Westwood.
 - 3. Arrange for reasonable access to the Project site and other private or public property, including any easements or other authorizations as required for Westwood to provide the Services.
 - 4. Review all documents and/or oral reports presented by Westwood and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services for the Project.
 - 5. Apply for and furnish applicable approvals, licenses, and/or permits from governmental authorities having jurisdiction over the Project.
 - 6. Furnish certifications and/or consents from other entities as may be necessary from time to time and in accordance with Section 10.01.C herein.

7. Be responsible for obtaining from others such independent accounting, legal, insurance, cost estimating, and overall feasibility services as Client may desire for the Project.
8. Comply with all applicable safety guidelines at the Project site at its own expense.
9. Give reasonably prompt written notice to Westwood whenever Client becomes aware of any development that affects the scope, timing, and/or payment of Westwood's Services and/or any defect or noncompliance in any aspect of the Project.
10. Bear all costs incidental to the responsibilities of Client under this Agreement.

3.01 ADDITIONAL SERVICES

- A. The Parties recognize that the Project scope may change from time to time, and in such an event, Westwood may furnish services in addition to those set forth in the Scope of Services & Fee Proposal, if authorized by Client in writing.
- B. In such case(s), the Parties shall appropriately and reasonably adjust Westwood's Services, the Project Schedule, and compensation for such additional services. Specifically, Client shall pay Westwood for such additional services an amount equal to the cumulative hours charged to the Project by each class of Westwood's employees multiplied by the rates for each applicable billing class plus reimbursable expenses and Westwood's consultant charges, if any. Client shall also adjust the budget and anticipated design and construction milestones, if any, as necessary to accommodate such changes to the Project Schedule. Additional Services may be documented in a Project Change Order, a template of which is attached and incorporated by reference herein as **Exhibit "E"**.

4.01 PAYMENT PROCEDURES

- A. *Compensation.* Client shall compensate Westwood for its Services as set forth in the Compensation & Method of Payment/Fee Schedule, attached and incorporated by reference herein as **Exhibit "B"**, including any subsequent amendments and/or change orders. Client shall pay Westwood as follows:
 1. *Hourly.* If the Services are agreed to be on an hourly basis, invoice amounts shall be in accordance with Westwood's Fee Schedule in effect at the time when the Services are performed. Westwood's standard hourly rates in the Fee Schedule shall be defined as an amount equal to the cumulative hours charged to the Project by Westwood's employees times standard hourly rates for each applicable billing class for all Services performed on the Project plus reimbursable expenses and Westwood's consultant charges, if any. Fee Schedule prices and rates are subject to change.
 2. *Lump Sum.* If the Services are agreed to on a lump sum basis, invoice amounts shall be an amount equal to the percent of each task's completion multiplied by the lump sum of the task plus reimbursable expenses and Westwood's consultant charges, if any.

Reimbursable expenses are defined as project-related internal expenses to Westwood actually incurred plus all invoiced external reimbursable expenses allocable to the specific project, the latter of which is multiplied by a factor of 1.15.

If applicable, when compensation to Westwood includes charges of Westwood's consultants, those charges shall be the amounts billed by Westwood's consultants to Westwood multiplied by a factor of 1.15. The consultant's reimbursable expenses and Westwood's factors include consultant

overhead and profit associated with Westwood's responsibility for the administration of such services.

Fee estimates are included in the Scope of Services & Fee Proposal. Westwood may alter the distribution of compensation between individual phases of work to be consistent with Services actually rendered.

- B. *Preparation of Invoices.* Westwood will prepare a monthly invoice in accordance with Westwood's standard invoicing practices and submit the invoice to Client.
- C. *Payment of Invoices.* Invoices are due and payable within thirty (30) days of receipt.
- D. *Termination or Suspension of Services.* If Client fails to make any payment due to Westwood for fees, costs, or expenses within thirty (30) days of receipt of Westwood's invoice, such failure shall be considered substantial nonperformance and cause for termination in accordance with Section 9.01.B.2.iii of this Agreement. Alternatively, Westwood may suspend Services under this Agreement until Westwood has been paid in full for all amounts due and after giving seven (7) days advance written notice to Client. In the event of a suspension of Services, Westwood shall have no liability for delay or damage caused because of its suspension of Services. If Westwood resumes its Services after being paid all amounts due, the Project and Fee Schedules may be equitably adjusted, if necessary.
- E. *Payment Disputes.* Client shall provide written notification to Westwood within fourteen (14) days of receipt of the invoice should Client object to all or any part of the charges appearing on the invoice. Such written notice shall set forth, at a minimum, the specific portion of the invoice disputed, the amount disputed, and the alleged factual and legal basis for the dispute. The portion of the invoice not in dispute shall be paid by Client within thirty (30) days receipt of said invoice, and the disputed portion shall be resolved in accordance with Section 8.01 herein.

In no event shall Client withhold amounts from Westwood's compensation to impose a penalty or liquidated damages unless Westwood has been found liable for the amounts in a binding dispute resolution proceeding or lawsuit. Further, Westwood has the right to engage consultants to mitigate its damages, if needed.
- F. *Taxes.* Each Party shall be solely responsible for their own tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to this Agreement.
- G. *Attorney Fees.* In the event that Westwood must retain an attorney or collection agency due to Client's breach of this Agreement and/or to recover amounts due and owing to Westwood, including any additional services authorized by Client in writing pursuant to Section 3.01, Client shall be liable for all fees, costs, and expenses, including reasonable attorney fees, incurred regardless of whether an action is filed or not.
- H. *Interest.* Interest on any outstanding invoice balance past 30 days shall accrue at the rate of 1.25% per month or the highest rate permitted by law. Payments will be credited first to interest and then to principal.

5.01 INTELLECTUAL PROPERTY

- A. *Ownership and License.* Upon Westwood's receipt of full payment for the Deliverables and/or Instruments of Services, Client shall be the owner of all right, title, and interest in and to any and

all Deliverables and/or Instruments of Service. Provide, however, that Westwood shall retain any ownership, copyright, and property interests in its standard systems, sections, details and specification.

- B. *Reuse*. Deliverables and/or Instruments of Service are not intended or represented to be suitable and are not licensed to Client for reuse, change, or alteration on extensions of the Project or on any other project without the express written permission of Westwood. Any unauthorized use of the Deliverables and/or Instruments of Service will be at the Client's sole risk without legal exposure or liability to Westwood.

6.01 GENERAL CONSIDERATIONS

- A. *Standard of Care*. The standard of care (“**Standard of Care**”) for all Services performed or furnished by Westwood under this Agreement will be the care and skill ordinarily used by members of Westwood's profession practicing under similar circumstances at the same time and in the same locality. Westwood shall perform its Services as expeditiously as is consistent with such professional skill and care and in accordance with the orderly progress of the Project.
- B. **DISCLAIMER OF WARRANTIES AND GUARANTEES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.01.A ABOVE, WESTWOOD MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO WESTWOOD'S SERVICES UNDER THIS AGREEMENT. WESTWOOD HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THESE SERVICES AND THIS DISCLAIMER EXTEND TO ALL WESTWOOD DELIVERY SERVICES, SOFTWARE, DATA, AND ALL OTHER WESTWOOD WORK PRODUCT AND INTELLECTUAL PROPERTY. FURTHER, WESTWOOD NEITHER GUARANTEES THE PERFORMANCE OF ANY THIRD PARTY, INCLUDING CONTRACTORS, USING THE DELIVERABLES OR SERVICES NOR ASSUMES ANY RESPONSIBILITY FOR ANY THIRD PARTY'S FAILURE TO FURNISH OR PERFORM ANY WORK THAT USES THE DELIVERABLES OR SERVICES.**
- C. *Compliance with Laws*. The Parties will apply the Standard of Care identified in Section 6.01.A and will comply with applicable laws, codes, regulations, and ordinances in effect during the term of this Agreement, which to the best of each Party's knowledge, information, and belief, apply to each Party's respective obligations.
- D. *Right of Entry*. Client grants to Westwood, and, if the Project site is not owned by Client, shall obtain permission for, a reasonable right of entry, access, and/or easement from time to time by Westwood, its employees, agents, and/or consultants upon the Project site for the purpose of providing the Services. Upon written request and approval by Westwood, Westwood may assist Client in obtaining necessary permits and/or licenses related to rights of entry and/or easements in order for Westwood and Westwood's consultants, if any, to adequately access and perform Services at the Project site under this Agreement.
- E. *Underground Data and Investigative Equipment*. Client shall advise and provide Westwood with all information and data in its possession concerning the type and location of all underground utilities, both public and private, as applicable. Client recognizes that the use of investigative equipment and practices may unavoidably alter the existing Project site conditions and affect the environment in the area being studied despite the use of reasonable care. To the extent allowed by

Texas law, Client shall indemnify and hold Westwood harmless from claims for damages caused by reasons of Westwood's provision of Services under this Section.

- F. *Reliance on Client-Provided Data.* Client shall be responsible for—and Westwood and its consultants, if any, may use and/or rely upon—the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Client or Client's consultants, if any, including but not limited to Client's contractors, manufacturers, and/or suppliers (collectively, "**Client-Provided Data**"). Westwood may use such Client-Provided Data in performing or furnishing the Services under this Agreement, and Westwood shall coordinate the Services with the work provided by Client and/or Client's consultants for the Project.
- G. *Corrections.* Within 60 days of delivery, if Client reasonably and timely notifies Westwood in writing of a deficiency(ies) with Westwood's Services, Deliverables, and/or Instruments of Service, Westwood—as Client's sole and exclusive remedy—shall correct such deficiency(ies) without additional compensation to Client within 60 days after Westwood's receipt of Client's written notice, except to the extent such action is directly attributable to deficiencies in Client-Provided Data. If for any reason Westwood is not able to correct such deficiency(ies) within 60 days after Westwood's receipt of Client's written notice under this Section, Westwood will notify Client and will advise in writing the timeframe needed to correct the deficiency(ies) as expeditiously as possible.
- H. *Responsibility for Others.* Westwood shall not be responsible for the acts, errors, or omissions of any consultant(s), contractor(s), subconsultant(s), subcontractor(s), and/or supplier(s), or of any of their agents or employees or any other persons (except Westwood's own employees or those for whom Westwood is legally responsible) furnishing or performing any work or for any decision made on interpretations or clarifications of Deliverables or Instruments of Service without the consultation and advice of Westwood.
- I. *Non-Construction Phase Work.* It is understood and agreed that if Westwood's Services under this Agreement do not include construction-phase work, and that such work will be provided by Client or others on behalf of Client, then Client assumes all responsibility for interpretation of the Deliverables and/or Instruments of Service for construction observation and/or review. In such instances, if applicable, Client waives any and all claims against Westwood that may be in any way connected thereto. Further, Westwood shall not be required to make exhaustive or continuous on-site inspections of the Project to check the quality or quantity of the work for construction but will reasonably promptly report to Client known deviations, defects, and/or deficiencies, if any.
- J. *Hazardous Environmental Conditions.* The Parties acknowledge this Agreement does not include any Services related to a hazardous environmental condition. Such conditions include, but are not limited to the presence of, asbestos, polychlorinated biphenyls, petroleum, toxic substances or waste, and/or radioactive materials (collectively, "**Hazardous Environmental Conditions**"). If Westwood or any other entity or individual encounters a Hazardous Environmental Condition, Westwood may, at its option and without liability for consequential, liquidated, or any other damages, suspend performance of Services on the portion of the Project affected thereby until Client (i) retains an appropriate specialist consultant and/or contractor to identify and, as appropriate, abate, remediate, and/or remove the Hazardous Environmental Condition and (ii) warrants that the site is in full compliance with applicable laws, codes, regulations, and ordinances then in effect, if any. Westwood shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons or property to any such Hazardous Environmental Condition in any form at the Project site.

- K. *Substitutions*. Westwood shall not be responsible for Client's directive, substitution, or acceptance of non-conforming work at the Project that is made or given without Westwood's written approval.

7.01 ALLOCATION OF RISKS

A. ***INDEMNITY BY WESTWOOD***. TO THE FULLEST EXTENT PERMITTED BY LAW, WESTWOOD SHALL INDEMNIFY AND HOLD HARMLESS (BUT SHALL NOT DEFEND) CLIENT, CLIENT'S OFFICERS, DIRECTORS, PARTNERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR COSTS, LOSSES, OR DAMAGES TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF WESTWOOD OR WESTWOOD'S OFFICERS, DIRECTORS, PARTNERS, OR EMPLOYEES IN THE PERFORMANCE OF WESTWOOD'S OBLIGATIONS UNDER THIS AGREEMENT. IN NO EVENT SHALL WESTWOOD'S INDEMNITY OBLIGATIONS EXTEND BEYOND ANY APPLICABLE ANTI-INDEMNITY STATUTE OR THE LIMITS OF LIABILITY CONTEMPLATED IN SECTION 7.01.C BELOW.

B. ***INDEMNITY BY CLIENT***. TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS (BUT SHALL NOT DEFEND) WESTWOOD, WESTWOOD'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND WESTWOOD'S CONSULTANTS, IF ANY, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR COSTS, LOSSES, OR DAMAGES TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF CLIENT OR CLIENT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, OR CLIENT'S CONSULTANTS IN THE PERFORMANCE OF CLIENT'S OBLIGATIONS UNDER THIS AGREEMENT.

C. *LIMITATION OF LIABILITY*

1. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THIS AGREEMENT TO CLIENT AND WESTWOOD, THE RISKS HAVE BEEN ALLOCATED SUCH THAT CLIENT AGREES, TO THE FULLEST EXTENT OF THE LAW AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF WESTWOOD AND WESTWOOD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS TO CLIENT OR TO ANYONE CLAIMING BY, THROUGH, OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDING BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ACTS, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF ANY WARRANTY, EXPRESS OR IMPLIED, OF WESTWOOD OR WESTWOOD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONSULTANTS, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY WESTWOOD UNDER THIS AGREEMENT OR \$1,000,000.00, WHICHEVER IS GREATER.
2. FURTHER, WESTWOOD'S TOTAL LIABILITY TO CLIENT AND ANYONE CLAIMING BY, THROUGH, OR UNDER CLIENT FOR ANY COST, LOSS, OR DAMAGES CAUSED IN PART BY THE NEGLIGENCE OF WESTWOOD

AND IN PART BY THE NEGLIGENCE OF CLIENT OR ANY OTHER NEGLIGENT ENTITY OR INDIVIDUAL SHALL NOT EXCEED THE PERCENTAGE SHARE THAT WESTWOOD'S NEGLIGENCE BEARS TO THE TOTAL NEGLIGENCE AT ISSUE.

3. IT IS INTENDED BY THE PARTIES THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT SHALL NOT SUBJECT WESTWOOD'S INDIVIDUAL SHAREHOLDERS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OR EMPLOYEES TO ANY PERSONAL LEGAL EXPOSURE FOR THE RISKS ASSOCIATED WITH WESTWOOD'S SERVICES UNDER THIS AGREEMENT.
4. UNDER NO CIRCUMSTANCES SHALL WESTWOOD BE LIABLE FOR EXTRA COSTS, DAMAGES, FEES, OR OTHER CONSEQUENCES DUE TO CHANGED CONDITIONS OR FOR THE FAILURE OF OTHER ENTITIES OR INDIVIDUALS TO PERFORM WORK IN ACCORDANCE WITH THE DESIGN PLANS AND SPECIFICATIONS.

D. WAIVER OF CERTAIN DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY WAIVES AGAINST THE OTHER, INCLUDING THEIR EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, AND INSURERS, ANY AND ALL CLAIMS FOR OR ENTITLEMENT TO INCIDENTAL, SPECIAL, CONSEQUENTIAL, LIQUIDATED, INDIRECT, EXEMPLARY, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, THE PROJECT, THE DELIVERABLES, INSTRUMENTS OF SERVICE, AND/OR EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. THIS PROHIBITION EXTENDS TO ANY CLAIMS BY CLIENT OR A THIRD PARTY(IES) FOR LOSS OF PROFITS, REVENUE, OPPORTUNITY, GOOD WILL, COST OF SUBSTITUTE FACILITIES, GOODS, SERVICES, AND/OR COST OF CAPITAL.

8.01 CLAIMS AND DISPUTES

- A. *Notice.* In addition to the provisions of Section 4.01.F above regarding payment disputes, if any other dispute, controversy, or claim ("**Dispute**") should arise between the Parties relating to this Agreement, written notice of the Dispute shall be provided by the aggrieved Party to the other Party within 14 days of the instance giving rise to the Dispute.
- B. *Informal Dispute Resolution.* After written notice of a Dispute, the Parties shall attend an in-person meeting, or by remote means if mutually agreeable, in the county where the Project is located or at another mutually agreeable venue. Each Party shall designate at least one person with authority to act and bind the company on its behalf to attend the meeting in a good faith effort to resolve the Dispute and in a timely and cost-effective manner before any further escalation as detailed in this Section.
- C. *Mediation and Litigation.* Should any Dispute fail to resolve during the meeting required under Section 8.01.B, such Dispute shall be submitted to mediation in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association as a condition precedent to arbitration. The Parties shall agree upon a mediator in the county where the project from which the Dispute arises is located or in another county if mutually agreed in writing by the Parties. The Parties shall split any mediation fee(s) payable to the mediator to conduct the mediation. The Parties shall each be responsible for and bear their own separate costs and fees for the mediation. Any mediation or civil action by Client must be commenced within one year of the

accrual of the cause of action asserted but in no event later than allowed by applicable statutes. Should mediation fail, the Dispute shall be resolved by litigation to be held in the county where the Project is located or in another county if mutually agreed in writing by the Parties.

- D. *Subpoenas and Document Production.* In the event Westwood is asked or forced through subpoena, deposition, or otherwise to participate in a dispute resolution proceeding between Client and a third-party(ies), including but not limited to providing trial and pre-trial testimony and searching, reviewing, and/or producing documents, Westwood shall recover its costs, fees, and expenses (including its attorney fees) and be compensated for all time spent at the highest rate provided in **Exhibit “B”**.
- E. *Prevailing Party.* In the event of a Dispute, mediation, arbitration, or litigation related to the enforcement of this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorney fees, expenses, and costs in bringing or defending the action. As used herein, a **“Prevailing Party”** means the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to the totality of claims, including counterclaims and crossclaims, if any, and having the greatest value or importance as determined by the court, mediator, or arbitrator(s) allowing for all of the claims and defenses asserted. In claims for money damages, the total amount of recoverable attorney fees, expenses, and costs shall not exceed the net monetary award or judgment of the prevailing party.
- F. *Consolidation/Joinder.* The Parties agree to consolidation and/or joinder with another pending dispute resolution proceeding, if any, to the extent such consolidation and/or joinder (i) substantially involves common questions of law or fact; (ii) is in the interest of justice or is otherwise necessary to afford complete relief to the Parties hereto; and (iii) is permitted by the judge, arbitrator, mediator, or other decision maker in the other dispute resolution proceeding. The Parties consent to consolidation and/or joinder under this Section even if the other dispute resolution proceeding is in a venue not provided for in this Agreement and/or otherwise is not selected by the Parties hereto.
- G. *Performance.* Client shall continue its payment obligations in accordance with this Agreement during the pendency of any dispute resolution proceedings, including informal dispute resolution, mediation, arbitration, and/or litigation.

9.01 TERM AND TERMINATION

- A. *Term.* This Agreement shall commence on the Effective Date and remain in full force and effect for a period of one (1) year after Westwood’s completion of Services. This Agreement may be renewed by mutual written agreement of the Parties.
- B. *Termination.* This Agreement may be terminated:
 - 1. By either Party upon 30 days written notice in the event of failure by the other Party to perform in accordance with the Agreement’s terms through no fault of the terminating party.

Notwithstanding the foregoing, this Agreement will not terminate as a result of a failure to perform in accordance with the Agreement if the Party receiving a notice of failure to perform begins within seven (7) days of receipt of such notice to correct its failure and proceeds diligently to cure such failure within 30 days of receipt of said notice; provided, however, that if and to the extent such failure cannot be reasonably cured

within such 30 day period, and if such Party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. By Westwood:

- i. Upon seven (7) days written notice if Westwood believes that Westwood is being requested by Client to furnish or perform services contrary to Westwood's responsibilities as a licensed professional;
- ii. Upon seven (7) days written notice if Westwood's Services for the Project are delayed or suspended for more than 90 days for reasons beyond Westwood's control; or
- iii. Upon seven (7) days written notice if Client fails to make any payment due to Westwood in accordance with this Agreement.

Westwood shall have no liability to Client as a result of such termination in this Section.

3. In the event of a termination of this Agreement, the terminating Party may set the effective date of termination at a time up to 30 days later than would otherwise be provided to allow Westwood time to demobilize personnel and equipment from the Project site; to complete tasks providing value that would otherwise be lost; to prepare notes as to the status of completed and uncompleted tasks; and/or to assemble Project materials in orderly files. Westwood shall be compensated for the time required to complete such tasks.

10.01 MISCELLANEOUS PROVISIONS

- A. *Insurance.* Westwood shall maintain insurances during the term of this Agreement as indicated in **Exhibit "C"**, attached and incorporated by reference herein.
- B. *Independent Contractor.* Nothing contained in this Agreement shall be construed to mean that Westwood and Client are engaging in an employer/employee relationship, joint venture, agency, fiduciary relationship, or partnership. The Parties shall at all times be and remain independent contractors of one another. Except as expressly agreed by the Parties in writing, neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever. Neither Party shall have any obligation or duty to the other Party except as expressly and specifically set forth herein, and no such obligation or duty shall be implied by or inferred from this Agreement or the conduct of the Parties hereunder.
- C. *Successors and Assigns.* The Parties and the partners, successors, executors, administrators, and legal representatives of each Party are each hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Party may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) under this Agreement without the written consent of the other.

- D. *No Third-Party Rights.* This Agreement shall not create any rights or benefits to entities other than to Client and Westwood, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of Client and Westwood. No third party shall have the right to rely on Westwood's Deliverables, Instruments of Service, or opinions rendered in connection with the Services without the written consent of Westwood and the third party's agreement to be bound to the same conditions and limitations as Client.
- E. *Force Majeure.* An event of force majeure ("**Force Majeure**") occurs when an event beyond the control of the Party claiming Force Majeure prevents such Party from fulfilling its obligations under this Agreement. An event of Force Majeure includes, without limitation, floods, hurricanes and other adverse weather conditions, war, riot, civil disorder, acts of terrorism, disease, epidemic, pandemic, strikes and labor disputes, actions or inactions of government or other authorities, law enforcement actions, curfews, closure of transportation systems or other unusual travel difficulties, or the inability to provide a safe working environment.

In the event of a Force Majeure, the obligations of Westwood to perform Services shall be suspended for the duration of the event of Force Majeure. In such event, Westwood shall be compensated for time expended and expenses incurred during the event of Force Majeure, and the Project Schedule shall be equitably extended by a like number of days as the event of Force Majeure.

If Services are suspended for 30 days or more, Westwood may, in its sole discretion and upon five (5) days prior written notice, terminate this Agreement, the amendments hereto, if any, the affected change order(s), if any, or any of the above. In the case of such termination, and in addition to the compensation and time extension set forth above, Westwood shall be compensated for all reasonable termination expenses.

- F. *Choice of Law.* This Agreement and any disputes arising out of or relating hereto and/or to this Agreement, its formation, and/or the Exhibits hereto shall be governed by the laws of the State of Texas.
- G. *Survivability.* Sections 5.01, 6.01.A-B, 7.01, and 8.01 included in this Agreement shall survive this Agreement's completion or termination for any reason.
- H. *Invalidity.* Any provision or part of this Agreement held to be invalid, void, or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties. To the fullest extent permitted by law, the stricken portion shall be revised to the extent necessary to make that provision legal and enforceable and shall give effect to the Parties' intentions and purposes in executing this Agreement.
- I. *Conflicting Provisions.* In the event the terms of these General Conditions conflict with the Agreement Exhibits, the Prime Contract, or any other applicable agreement, these General Conditions as between Client and Westwood shall govern unless the Parties expressly agree in writing otherwise.
- J. *Notices.* Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement, and shall be deemed to be properly given (i) when delivered personally; by registered or certified mail, return receipt requested, postage prepaid; or by UPS/FedEx express courier service or (ii) when sent by e-mail with receipt confirmation requested, provided, that a hard copy of such notice shall also be sent in accordance with the methods described in clause (i) of this Section within two (2) business days of such email. All notices shall

be sent to the address set forth on the signature page of this Agreement or to such other address or person as may be designated by a Party in writing to the other Party pursuant to this Section.

- K. *Total Agreement.* This Agreement constitutes the entire Agreement between the Parties and supersedes all prior written or oral understandings regarding this subject. This Agreement may only be amended, supplemented, superseded, or modified by a mutually executed written instrument by both Parties. No waiver of any condition or of the breach of any term of this Agreement shall be deemed to be a further or continuing waiver of any such condition or of the breach of any term of this Agreement.
- L. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument.

[Remainder of Page Left Intentionally Blank; Signature Page Follows]

The Parties hereto have executed this Agreement as of the Effective Date first indicated above.

CLIENT:
City of Willow Park

WESTWOOD:
Westwood Professional Services, Inc.

(Signature)

(Signature)

(Name – Printed)

(Name – Printed)

(Title)

(Title)

(Date)

(Date)

Client Address/Contact for giving notices:

Westwood Address/Contact for giving notices:

Westwood Professional Services, Inc.

C/O General Counsel

2805 North Dallas Parkway, Suite 150

Plano, Texas 75093

Email: legal@westwoodps.com

EXHIBITS:

- A Scope of Services & Fee Proposal**
- B Compensation & Method of Payment/Fee Schedule**
- C Insurance**
- D Concept**

EXHIBIT ‘A’ – SCOPE OF SERVICES

WILLOW PARK FY26 GREEN RIBBON & GATEWAY AMENITY

PROJECT DESCRIPTION:

The project consists of landscape planting and irrigation plans for the award of \$400,000.00 in TxDOT Green Ribbon funding to be used along IH 20 at the intersection of Mikus Road. (PROJECT).

BASIC SERVICES:

A. Landscape Architecture Assumptions and Exclusions

Below are shown the assumptions and qualifiers for the landscape architecture scope of work found herein.

Assumptions:

- Area of work is as shown in “Exhibit C” attached.
- The design will be based on the concept used for the green ribbon application, consisting of planting and irrigation items only based on TxDOT's Green Ribbon Project.
- Project budget is based upon the TxDOT award letter of a 400,000.00-construction budget.
- The project will be delivered via TxDOT’s State Let PS&E process in one drawing set.
- No survey will be done for this project. The project limits and area of work will be based on Google aerials, Lidar data available, existing plans available, and City staff knowledge of the area.

Exclusions:

- Field identification or location of trees.
- Multiple design alternatives beyond those described herein, or significant site plan revisions following acceptance at each given phase of review documents.
- Vehicular paving.
- Irrigation systems utilizing reclaimed water that require pumps, filters and associated controls. This can be provided as an additional service if needed.
- Signage, wayfinding and/or signs for buildings and vehicular circulation.
- Site and/or ornamental lighting.
- Site walls over 36” height and/or retaining walls less than 36” height with surcharges, or walls attached to architectural structures.
- Regular owner/Architect/Contractor (OAC) project coordination meetings during construction.

B. Plan Submittals, Coordination Meetings & Project Management

A Landscape Architect from Westwood will attend meetings and/or presentations to coordinate with other team members and the owner during the design phase. Plans and specifications will be submitted as outlined for Owner and/or TxDOT review in the submittals outlined below.

Included in this item:

- Up to six (6) team coordination meetings during the design phase of the project.
- Official plan review submittals as follows:
 - One (1) 60% Design Development PS&E review submittal. Deliverables include:
 - Cover Page, Index, General Notes and Quantities Tables
 - General Layout Plan
 - TxDOT Standards
 - Erosion Control Plan
 - EPIC Sheets for Environmental
 - Planting Plan
 - Irrigation Plan
 - One (1) (90%) Construction Document PS&E review submittal. Deliverables include:
 - Advancement and refinement of 60% plans.
 - Construction Details
 - One (1) (95%) Construction Document PS&E review submittal. Deliverables include:
 - Advancement and refinement of 90% plans.
 - Construction Details
 - One (1) "For Construction" set of drawings. Deliverables include:
 - Signed and Sealed Construction Document Plans and Specifications

C. Supplemental Design Requirements

Westwood will prepare additional files and standard plan sheets to complete TxDOT's PS&E process for a state let.

Included in this item:

- Base file creation in absence of design survey data. Develop a schematic working base file from Lidar, digital CAD data, aerial photos and pdf document available.
- Site visit to verify existing conditions at locations subject to improvements.
- General notes related to demolition activities and TxDOT specification standards.
- One (1) Epic Sheet and One (1) Erosion Control Plan if required showing the location of sediment controls.
- Standard TxDOT Sheets to include: one (1) Cover Page, one (1) Index of Sheets, one (1) Estimates and Quantities, one (1) Quantity Summary, Traffic Control Plan Standards and Traffic Standards (Electrical) if required.
- Standard TxDOT PS&E forms and coordination in TxDOT Connect.

D. Landscape Planting Plans

Westwood will provide a Landscape Planting Plan that consists of selection and location of ornamental plantings, trees, turf, mulches, and associated items.

Included in this item:

- Full construction design and documentation based on the concept approved and included in the Green Ribbon Grant Application with deliverables as previously described to a level that is sufficient to demonstrate design intent and allow the construction thereof, including materials and quantity schedules per TxDOT's PS&E process.
- Plans will be drawn on 22"x34" plan sheets and submitted in 11x17 format as outlined in Plan Submittals.

E. Landscape Irrigation Plans

Westwood will provide a Landscape Irrigation Plan that consists of a fully automated irrigation system to service the plantings on the site as required.

Included in this item:

- Full construction design and documentation based on the concept approved and included in the Green Ribbon Grant Application with deliverables as previously described to a level that is sufficient to demonstrate design intent and allow the construction thereof, including materials and quantity schedules per TxDOT's PS&E process.
- Plans will be drawn on 22"x34" plan sheets and submitted in 11x17 format as outlined in Plan Submittals.

F. Gateway Monument

Westwood will provide Landscape Architectural Design services for design of one (1) Gateway monument to be incorporated into the TxDOT PS&E plan set.

Included in this item:

- Develop up to two (2) concepts and provide a rendering of the proposed monument with materials, colors and scale identified.
- One (1) meeting to present the proposed monument and gather input from the owner for incorporation.
- Plan, section and elevation details of the proposed monument with recommendation for location both horizontally and vertically based on base file information gathered.
- Coordination with Structural Engineer related footings, if required.
- Coordination with Electrical Engineer for any electrical and lighting requirements, if required.

G. TxDOT Environmental Documents

Westwood will manage environmental documents in accordance with TxDOT guidelines.

Included in this item:

- Prepare the necessary documentation to obtain a categorical blanket exclusion for environmental clearance through TxDOT.

H. Traffic Control Narrative

Westwood will provide a Traffic Control Narrative that will explain what TxDOT Standard traffic controls should be used during construction, to be placed on the planting plans.

I. Reimbursable Expenses

Included in this item are usual and customary expenses normally incurred during this type of project. These could include travel expenses, courier delivery charges, overnight delivery charges, copies of existing plans and/or maps, photocopies, printing and reproduction (either in-house or by reproduction company). Application, review and filing fees are not included in this item. These services will be billed at cost +10%, with documentation provided, and are shown as a not to exceed (NTE) cost in the Compensation section.

J. Landscape Architecture Bid Phase Services

During the Bid Phase, Westwood will be available to provide limited coordination as required with prospective bidders.

Included in this item:

- Responding to pre-bid RFI's by the potential contractors.
- Review of subcontractor bids for scope of work outlined by the Landscape Architectural construction documents.

K. Landscape Construction Administration

Westwood will provide limited Construction Administration services related to the work shown on the Landscape Architecture Plans.

A representative will process shop drawings and product submittals, respond to RFIs, and issue supplemental instructions if required related to the work shown on the Landscape Architecture Plans provided by Westwood. Submittals not required by the contract documents or not related to plans developed by the landscape architect will not be reviewed.

At the request of the Owner, Westwood will visit the site at critical junctures during the course of site construction up to two (2) times. Recommended times for site visits could include:

- Testing of the irrigation main line and landscape drainage structures.
- Upon completion of soil preparation and finish grade, after plant material has been laid out, but prior to actual planting.
- Substantial Completion Walk-Through.
- Final Completion Walk-Through.

This shall not be construed as performing continuous construction inspection.

Please note the following:

- Westwood shall not at any time supervise or have authority over any Contractor work or jobsite management procedures, nor shall Westwood have authority over or be responsible for the means and methods, or procedures of construction selected or used by the Contractor.
- Westwood neither guarantees the performance of the Contractor nor assumes responsibility for the Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- Westwood shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- Westwood shall not be responsible for the acts or omissions of the Contractor or for any decision or interpretation of the Contract Documents made by the Contractor.
- While at the Site, Westwood's employees and representatives shall comply with the specific applicable requirements of the Contractor's and Owner's safety programs of which Westwood has been informed in writing.

SPECIAL SERVICES:

L. Geotechnical Engineering

Westwood will contract with a sub consultant to provide a geotechnical engineering and report for the foundation of the gateway monument. This will be based on a single bore at the location shown on the concept plan.

M. Electrical Engineering

Westwood will contract with a sub consultant to provide electrical engineering services as they relate to the gateway monument. This includes coordination with the electrical company, backlit and uplighting and limited responses to contractor questions during CA.

N. Structural Engineering

Westwood will contract with a sub consultant to provide structural engineering services as they relate to the gateway monument. This includes details for the foundation and structure per recommendations from the geotech report and limited responses to contractor questions during Construction Administration.

Services not included in this contract:

- *As-builts of the constructed improvements.*
- *Public hearings or City Council/Commission meetings.*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities.*
- *Floodplain studies and permitting.*
- *Boundary and topographic surveying.*
- *Traffic and parking studies.*
- *Storm Water Pollution Prevention Plans (SWPPP).*
- *Demolition Plan.*
- *Drainage Plan.*
- *Hardscape Plan.*
- *Site Lighting Plan.*
- *Traffic Control Plan.*
- *Design of walls, light pole bases, transformer or generator pads, hardscape features, pavers and/or site signage.*
- *Graphic representation documents.*
- *Geotechnical investigation.*
- *Environmental investigation beyond what is shown above.*
- *Services associated with filing of the "Notice of Intent" form (NOI) to the Texas Commission on Environmental Quality (TCEQ) for the proposed construction activities.*
- *Reclaimed Water Irrigation Design.*
- *Wetlands determination and permitting.*
- *Dedication of easements and/or right-of-way be separate instrument.*

END OF EXHIBIT 'A'

EXHIBIT 'B' – COMPENSATION AND METHOD OF PAYMENT

WILLOW PARK FY26 GREEN RIBBON & GATEWAY AMENITY

COMPENSATION:

For all professional services included in EXHIBIT 'A', Scope of Services, Westwood shall be compensated a lump sum fee of \$80,000.00 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT 'A', including all labor materials, supplies, and equipment necessary to deliver the services.

Basic Services

A. Landscape Architecture Assumptions and Exclusions	N/A
B. Plan Submittals, Coordination Meetings & Project Management	\$5,000.00
C. Supplemental Design Requirements	\$14,000.00
D. Landscape Planting Plans	\$10,000.00
E. Landscape Irrigation Plans	\$9,000.00
F. Gateway Monument	\$7,400.00
G. TxDOT Environmental Documents	\$3,000.00
H. Traffic Control Narrative	\$3,000.00
I. Reimbursable Expenses	\$1,000.00
J. Landscape Architecture Bid Phase Services	\$2,000.00
K. Landscape Construction Administration	<u>\$4,000.00</u>
BASIC SERVICES TOTAL	\$58,400.00

Special Services

L. Geotechnical Engineering	\$7,700.00
M. Electrical Engineering	\$6,500.00
N. Structural Engineering	<u>\$7,400.00</u>
SPECIAL SERVICES TOTAL	\$21,600.00

GRAND TOTAL

\$80,000.00

METHOD OF PAYMENT:

Westwood shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of Westwood.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to Westwood plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times Westwood's cost.

END OF EXHIBIT 'B'

EXHIBIT C

INSURANCE

Westwood shall, during the term of this Agreement, maintain the following insurances:

1. Commercial General Liability (occurrence form not less than):
 - \$2,000,000 General Liability
 - \$2,000,000 Products and Completed Operations Aggregate
 - \$1,000,000 Personal and Advertising Injury
 - \$1,000,000 Each Occurrence
 - \$10,000 Medical Expense
2. Commercial Automobile Liability (all scheduled auto, hired and non-owned autos):
 - \$1,000,000 Combined Single Limit
3. Umbrella
 - \$5,000,000 Aggregate
 - \$5,000,000 Each Occurrence
4. Workers Compensation and Employer's Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 Policy Limit
 - \$1,000,000 Each Employee
5. Professional Liability
 - \$2,000,000 Per Claim
 - \$2,000,000 Aggregate

Professional Liability shall include prior acts coverage sufficient to cover the services performed under this Agreement and shall include limited contractual liability.

Exhibit D

