EXHIBIT
"A"

# CITY OF ROUND ROCK AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES RELATED TO OLD SETTLERS PARK – LAKEVIEW AREA PROJECT WITH WAELTZ & PRETE, INC.

THE STATE OF TEXAS	§	
	§	
THE CITY OF ROUND ROCK	§	KNOW ALL BY THESE PRESENTS
	§	
COUNTY OF WILLIAMSON	§	
COUNTY OF TRAVIS	§	

THIS AGREEMENT for professional consulting services related to the Old Settlers Park – Lakeview Area Project (the "Agreement"), is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (the "City"), and WAELTZ & PRETE, INC., located at 211 North A.W. Grimes Boulevard, Round Rock, Texas 78665 (the "Consultant").

#### **RECITALS:**

WHEREAS, professional services related to the Old Settlers Park – Lakeview Area Project, specifically engineering, architectural, and landscape architectural services for the design of a pavilion, restroom, stage and seating area, parking lot modifications, trail reconstruction, and utilities, are desired by the City (the "Project"); and

WHEREAS, City has determined that there is a need for the delineated services; and

WHEREAS, City desires to contract with Consultant for these services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

#### NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

#### 1.0 EFFECTIVE DATE, DURATION, AND TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated as provided herein.

- B. The term of this Agreement shall commence upon execution and terminate upon successful completion of the services. The Project is estimated to be completed no later than August 25, 2025.
- C. City and the Consultant reserve the right to review the Agreement at any time, and may elect to terminate the Agreement with or without cause or may elect to continue.

#### 2.0 CITY SERVICES

City agrees to provide the services to Consultant as described in Exhibit "A" titled "City Services," incorporated herein by reference for all purposes.

#### 3.0 SCOPE OF SERVICES

Consultant has issued its proposal for services, such proposal for services being attached to this Agreement as Exhibit "B" titled "Scope of Services," which shall be referred to as the Scope of Services of this Agreement and incorporated herein by reference for all purposes.

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "B" in the pursuant to the schedule set forth in Exhibit "C," attached hereto and incorporated herein by reference. Consultant shall perform services in accordance with this Agreement, in accordance with the appended Scope of Services and in accordance with due care and prevailing consulting industry standards for comparable services.

#### 4.0 LIMITATION TO SCOPE OF SERVICES

Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant and City agree that the Scope of Services to be performed is enumerated in Exhibit "B," and may only be modified by a written Supplemental Agreement executed by both parties as described in Section 10.0.

#### 5.0 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed Five Hundred Forty-Three Thousand Nine Hundred Forty-Nine and 56/100 Dollars (543,949.56) as set forth in Exhibit "D" titled "Fee Schedule," incorporated herein by reference for all purposes.

#### 6.0 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to

Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

Payment of Invoices: The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 8.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law. The City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

#### 7.0 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: <a href="https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\_insurance\_07.20112.pdf">https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\_insurance\_07.20112.pdf</a> and as set forth in the attached Certificate of Insurance (Exhibit "E"), incorporated herein by reference for all purposes.

#### 8.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the service performed that causes the payment to be late; or
- (c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or

(d) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

#### 9.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the services as determined by the City's budget for the fiscal year in question. The City may affect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

#### 10.0 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and the City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

#### 11.0 TERMINATION; DEFAULT

Termination: It is agreed and understood by Consultant that the City or Consultant may terminate this Agreement for the convenience of the City or Consultant, upon thirty (30) days' written notice to Consultant or City, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this Project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the Project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the terminating party and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

**Default:** Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

#### 12.0 NON-SOLICITATION

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither the City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

#### 13.0 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.

- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.
- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

#### 14.0 CONFIDENTIALITY; MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

# The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement (other than Deliverables). Consultant shall have the right to retain copies of the Deliverables and other items for its archives. Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. "Working papers" shall mean those documents prepared by Consultant during the course of performing the Project including, without limitation, schedules, analyses, transcriptions, memos, designed and developed data visualization dashboards and working notes that serve as the basis for or to substantiate the Project. In addition, Consultant shall retain sole and exclusive ownership of its know-how, concepts, techniques, methodologies, ideas, templates, dashboards, code and tools discovered, created or developed by Consultant during the performance of the Project that are of general application and that are not based on City's Confidential Information hereunder (collectively, "Consultant's Building Blocks").

extent any Deliverables incorporate Consultant's Building Blocks, Consultant gives City a non-exclusive, non-transferable, royalty-free right to use such Building Blocks solely in connection with the deliverables. Subject to the confidentiality restrictions mentioned above, Consultant may use the deliverables and the Building Blocks for any purpose. Except to the extent required by law or court order, City will not otherwise use, or sublicense or grant any other party any rights to use, copy or otherwise exploit or create derivative works from Consultant's Building Blocks.

City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

#### 15.0 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industrial standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

#### 16.0 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

Neither party's liability, in contract, tort (including negligence) or any other legal or equitable theory, (a) shall exceed the professional fees paid or due to Consultant pursuant to this Agreement or (b) include any indirect, incidental, special, punitive or consequential damages, even if such party has been advised of the possibility of such damages. Such excluded damages include, without limitation, loss of data, loss of profits and loss of savings of revenue.

#### 17.0 INDEMNIFICATION

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Agreement, which are caused by or which result from the negligent error, omission, or negligent act of Consultant or of any person employed by Consultant or under Consultant's direction or control.

Consultant shall also save and hold City harmless from any and all expenses, including but not limited to reasonable attorneys' fees which may be incurred by City in litigation or otherwise defending claims or liabilities which may be imposed on City as a result of such negligent activities by Consultant, its agents, or employees.

#### 18.0 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

#### 19.0 LOCAL, STATE AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

#### 20.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

- A. Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.
- B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of a contract. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.
- C. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of

at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has provision in the contract verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has provision in the contract verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

#### 21.0 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

#### 22.0 DESIGNATION OF REPRESENTATIVES

The City hereby designates the following representative authorized to act on its behalf with regard to this Agreement:

Katie Baker
Park Development Manager
Parks and Recreation Department
301 West Bagdad, Suite 250
Round Rock, Texas 78664
(512) 341-3345
kbaker@roundrocktexas.gov

#### 23.0 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address as stated herein; or
- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

#### **Notice to Consultant:**

Waeltz & Prete, Inc. 211 North A.W. Grimes Boulevard Round Rock, Texas 78665

#### **Notice to City:**

City Manager, City of Round Rock 221 East Main Street Round Rock, TX 78664

AND TO:

Stephanie L. Sandre, City Attorney 309 East Main Street Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

#### 24.0 APPLICABLE LAW AND ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

#### 25.0 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

#### 26.0 DISPUTE RESOLUTION

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

#### 27.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### 28.0 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

#### 29.0 GRATUITIES AND BRIBES

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

#### 30.0 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

#### 31.0 MISCELLANEOUS PROVISIONS

Time is of the Essence. Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each Phase of this Agreement within the agreed Project schedule may constitute a material breach of the Agreement.

Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

Force Majeure. Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

Section Numbers. The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

City of Round Rock, Texas Waeltz & Prete, Inc.			
By: Printed Name: Title: Date Signed:	By: At 1 Per Printed Name: Automio 1. Perte Title: Persident Date Signed: 04 Aug 23		
For City, Attest:			
By: Meagan Spinks, City Clerk			
For City, Approved as to Form:			
By:Stephanie L. Sandre, City Attorney			

#### **EXHIBIT "A"**

#### SERVICES TO BE PERFORMED BY THE CITY

The following services shall be provided by the City of Round Rock for this project at no cost to the consultant or their sub-consultants:

- All available "Record Drawings" for previous projects in the area of the proposed improvements. Additionally, any other available documents that would facilitate the Engineering scope, such as, previous reports, test records, easement documents, system maps, etc.
- 2. Assign a Project Manager to act as the project coordinator and to advise the consultant of all City of Round Rock issues relating to the analysis, design and /or construction of the project.

#### **EXHIBIT "B"**

# SERVICES TO BE PERFORMED BY THE ENGINEER BASIC SCOPE OF SERVICES

#### 1. PROJECT START-UP:

- a. Project Kick-Off Meeting. Coordinate with the City of Round Rock to identify project goals, schedules, and design elements.
- b. Gather, assemble, and review existing As-Built information within project limits.
- c. Site visit.

#### 2. PROJECT COORDINATION & MEETINGS:

- a. Project coordination meetings with the City of Round Rock throughout the design process (Assumes 4 ~ 2 hour meetings: 30%, 60%, 90%, 100%).
- b. Coordinate and meet with the project Team for items such as schedule, design coordination, and deliverables (Architect, Landscape Architect, Geotechnical Engineer, & Surveyor).

#### **DESIGN PHASE (SD / DD / CD):**

Waeltz & Prete, Inc. shall prepare detailed construction plans for the project. The project scope includes the design of a pavilion structure, restroom building, concrete stage with stone cladded retaining walls, mass grading of lawn seating area, parking lot/trail modifications, conversion of Harrel Parkway into a featured promenade node, relocation of Joanne Land Playground, driveway path for the "Beast". Services to include preparation of construction drawings, specifications.

#### 3. SCHEMATIC DESIGN (SD - 30%):

- a. Prepare preliminary site plan based upon the Owner's approved Concept Plan. Preliminary plan to include site elements identified in the Concept Plan, schematic design of water & wastewater services & off-site wastewater main, preliminary drainage & storm water management concepts.
- b. Prepare plan submittals at 30%.
- c. Prepare "Engineer's Opinion of Probable Construction Cost" for 30% submittal.
- d. QA/QC In house & sub-consultants peer reviews.

#### 4. DESIGN DEVELOPMENT (DD - 60%):

- a. Refine and finalize the preliminary site plan elements in accordance with the Design Development concept. This includes providing mass grading, final alignments for utilities, and identifying material and finish selections.
- b. Prepare plan submittals at 60%.
- c. Revise "Engineer's Opinion of Probable Construction Cost" for 60% submittal.

d. QA/QC - In house & sub-consultants peer reviews.

#### 5. CONSTRUCTION DRAWINGS (CD - 90% & 100%):

The Final Construction Drawings will include:

- a. City of Round Rock General Construction Notes and Project Specific Notes.
- b. Overall Project Site Plan.
- c. Demo Plan
- d. Erosion, Sedimentation, & Tree Protection Plan.
- e. Dimensional Control Plan.
- f. Grading and Drainage Plan.
- g. Utility Plans (Includes +/- 1,300 LF of off-site wastewater line main and on-site utility connections.
- h. Construction Details, as required.
- i. Architectural Construction Plans (By Mode Design Group)
- j. Landscape Architectural Plans (By Ecoland Design Group)
- k. Prepare plan submittals at 90%, and 100%.
- I. Revise "Engineer's Opinion of Probable Construction Cost" for 90% & 100% submittal.
- m. QA/QC In house & sub-consultants peer reviews.

#### 6. PERMIT PROCESSING:

- a. Process plans for approval through the City of Round Rock's Parks and Recreation Department,
- b. Submit Plans to TDLR.

#### 7. WCID ENCROACHMENT PERMIT:

a. Prepare and submit for approval, the WCID encroachment permit per the Check List provided by the WCID.

#### 8. STORM WATER POLLUTION PREVENTION PLAN (SWPPP):

- a. Preparation of a Storm Water Pollution Prevention Plan.
- b. Assist Owner and Contractor with NOI submission.

#### 9. BIDDING:

- a. Preparation of the City of Round Rock's standard contract documents and specifications.
- b. Issue addendums/clarifications, if required.
- c. Attend and preside over the pre-bid conference & bidding opening.

- d. Prepare bid tabulations and assist the City of Round Rock with the evaluation of bids and recommendations of the Contractor.
- e. QA/QC In house & sub-consultants peer reviews

#### **10. CONSTRUCTION PHASE:**

- a. Attend and preside over the preconstruction meeting.
- b. Attend bimonthly project progress meetings (assumes 12 months construction).
- c. Assist with pay application reviews and recommendations.
- d. Review of submittals, shop drawings, and samples.
- e. Respond to RFI's, if required.
- f. Periodic site visits (Assumes 2 per month).
- g. Preparation of final punch list.
- h. Issue "Engineer's Concurrence Letter" at project completion.
- i. Preparation of "Record Drawings". Waeltz & Prete will make changes to plans based upon Contractor's "mark-ups".

#### 11. TOPOGRAPHIC SURVEY (SUB-CONSULTANT – DIAMOND SURVEY):

a. Waeltz & Prete will secure the surveying services from Diamond Survey for professional land surveying. The scope will be to provide tree & topographic survey. Their proposal and detailed scope of service is attached directly behind the Civil Scope of Services.

#### 12. ARCHETECHTURAL SERVICES (SUB-CONSULTANT -- MODE DESIGN GROUP):

a. Waeltz & Prete will secure the Architectural services from Mode Design Group for professional architecture. The scope will be to provide design for a Pavilion and Restroom structure. and Stage foundation. The Architect will sub-contract Structural Engineer & MEP services. Their proposal and detailed scope of service is attached directly behind the Civil Scope of Services.

# 13. LANDSCAPE ARCHETECURAL SERVICES (SUB-CONSULTANT – ECOLAND DESIGN GROUP):

a. Waeltz & Prete will secure the Landscape Architectural services from Ecoland Design Group for professional landscape architecture. The scope will be to provide design for hardscape and landscape for the project area. Their proposal and detailed scope of service is attached directly behind the Civil Scope of Services.

#### 14. GEOTECHNICAL SERVICES (SUB-CONSULTANT - SCI ENGINEERING):

a. Waeltz & Prete will secure the Geotechnical services from SCI Engineering for professional geotechnical recommendations. Their proposal and detailed scope of service is attached directly behind the Civil Scope of Services.

#### 15. REIMBURSABLE EXPENSES:

a. All copying, purchases of maps and documents, tax certificates, deeds, plats, printing of reports and plans, mailing, courier, express/overnight and other related expenses shall be charged at cost.

#### **CLARIFICATIONS**

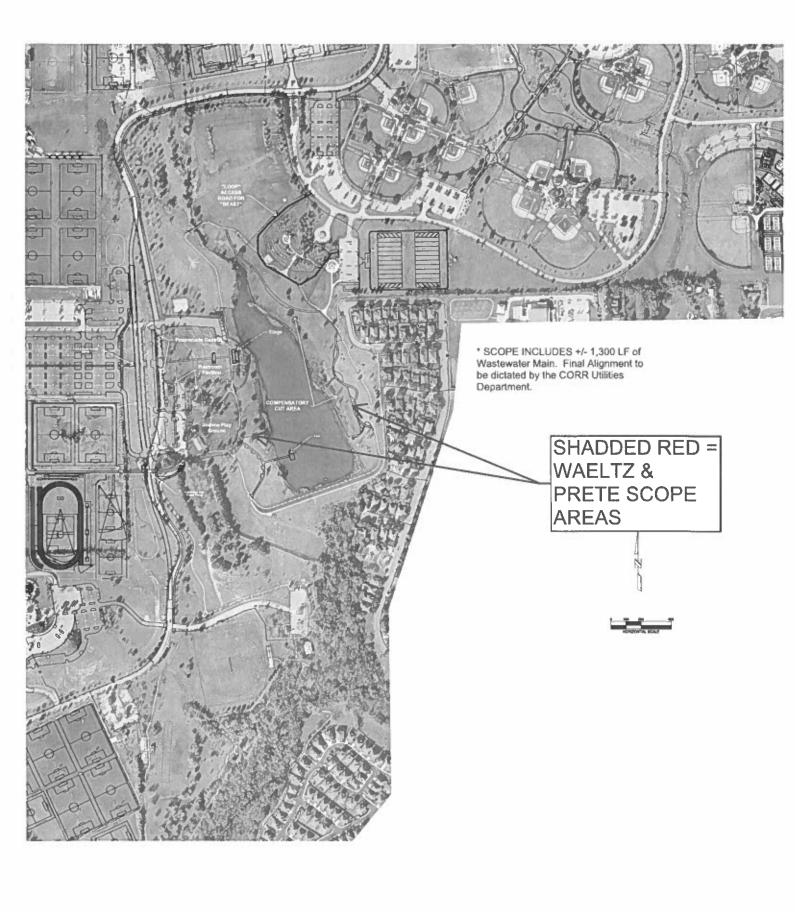
• It is assumed that no FEMA CLOMR or LOMR will be required for the project. It is expected that we will provide compensatory cut/fill for floodplain mitigation.

#### **EXCLUSIONS**

- > Conflict Resolution
- Legal Lot Determinations
- Off-Site Designs of Any Nature
- Wastewater System Modeling
- Geotechnical Construction Testing Lab Services
- > Environmental Studies
- Platting

- > Traffic Impact Analysis
- **→** Construction Staking
- > Subsurface Utility Engineering
- Assembly and Recording of Legal Documents
- Governmental Fees & Fiscal
- Preparation & Processing of Waivers, or Variances
- > FEMA CLOMR/LOMR

(End of Basic Scope of Services)



## Diamond Surveying, Inc.

Shane Shafer 116 Skyline Road Georgetown, TX 78628 Phone 931-3100 T.B.P.E.L.S. FIRM NO. 10006900 shane@diamondsurveying.com

Proposal No. 2023-WPI OLD SETTLER PARK AREAS 3 – 5 TOPO-TREE SURVEY

July 10, 2023

Waeltz & Prete, Inc. 211 N. A.W. Grimes Blvd Round Rock, TX 78665

Attention: Mr. Tony Prete, P.E.

Re: Proposal for survey services relating to performing a topographic and tree survey (locate all tree within the survey limits - see attached map for survey limits for Areas 3-5). And for an approximate 1,300 linear feet by 25' wide route topographic and tree survey for wastewater line. (Route to be determined by Project Engineer. Being located in Old Settlers Park, Round Rock, Texas.

We are pleased to submit our proposal for services related to the above referenced project. Below is our list of proposed Scope of Services and basis of Compensation:

#### Scope of Services:

1. Areas 3 - 5 Topographic and Tree Survey and approximately 1,300 liner feet by 25' wide route Topographic & Tree Survey: Perform office and field work necessary for a topographic and tree survey (locate all trees within the survey limits - see attached map for survey limits). Surveyor shall locate above ground utilities. Including a Utility One-Call (811 Digtess) request to mark underground utility lines. Surveyor shall tie pin flags and paint stripes as marked on the ground by utility locate companies. Surveyor shall take sufficient ground shots to produce one (1) foot contours. Bearing Basis: NAD-83, Texas Central (4203), State Plane System. Coordinates for this project will be surface coordinates based on a combined surface adjustment factor of 1.00011 per existing survey for Areas 1 and 2. Vertical Datum: NAVD-88 (GEOID 12A). Surveyor shall set a minimum of two (2) additional site benchmarks and four (4) additional survey control points to be used during the construction phase of Project. Surveyor shall send electronic ACAD file with survey data to Project Engineer. This does not include a signed and sealed paper plot ACAD file only.

Fee for item 1: \$22,780.00

#### Basis of Compensation:

We propose to provide the above listed services on a lump sum basis:

Total for the above listed scope of services shall be for a total lump sum amount of \$22,780.00.

We shall begin work on this project immediately upon receipt of signed contract. If this proposal is acceptable, please have the appropriate authority endorse the enclosed agreement and return a copy to our office for our files.

Thank you for the opportunity to be of service for this Project. We look forward to being a part of this project.

Sincerely,

Shane Shafer, R.P.L.S.

Shallof

#### PROFESSIONAL SERVICES AGREEMENT

Waeltz & Prete, Inc., as CLIENT, engages Diamond Surveying, Inc., as SURVEYOR to perform professional services for the assignment described as follows:

Survey services relating to performing a topographic and tree survey (locate all tree within the survey limits - see attached map for survey limits for Areas 3-5). And for an approximate 1,300 linear feet by 25' wide route topographic and tree survey for wastewater line. (Route to be determined by Project Engineer. Being located in Old Settlers Park, Round Rock, Texas.

- I. SERVICES: SURVEYOR agrees to perform in conformance with the following description, definition, terms and conditions. See attached **Proposal No 2023-WPI OLD SETTLER PARK AREAS 3 5 TOPO-TREE SURVEY dated July 10, 2023.**
- II. COMPENSATION: SURVEYOR'S compensation will be on a lump sum basis for professional services as follows:

Total for the services listed on Proposal No 2023-WPI OLD SETTLER PARK AREAS 3 – 5 TOPO-TREE SURVEY dated July 10, 2023 shall be for a total lump sum amount of \$22,780.00.

If the Surveyor is requested to perform additional services not included in the Scope of Services listed on **Proposal No 2023-WPI OLD SETTLER PARK AREAS 3 – 5 TOPO-TREE SURVEY dated July 10, 2023**, then the Client will be informed that additional charges will apply, and upon Client's approval of these charges the additional work will be performed.

- III. PAYMENTS: SURVEYOR will be paid in full for total amount earned under this Agreement. CLIENT agrees to pay SURVEYOR at his office in Georgetown, Texas, the full amount of all invoices within fourteen (14) days of receipt of any invoices.
- IV. OWNERSHIP OF DOCUMENTS: All documents, including original drawings, estimates, specifications, field notes and data are and shall remain the property of SURVEYOR. CLIENT may at his expense obtain a set of reproducible record copies of drawings and other documents, but agrees that he will use such copies solely in connection with the project covered by this Agreement and for no other purpose.
- V. LIABILITY LIMITATION: SURVEYOR shall have no liability to CLIENT or to others for any reasons beyond use of reasonable skill in performing the services for the assignment covered by this Agreement. In no event shall SURVEYOR'S liability exceed \$50,000.
- VI. DISPUTE RESOLUTION: In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and the SURVEYOR agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The CLIENT and the SURVEYOR further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

#### VII. TERMINATION:

A. CONDITIONS OF TERMINATION: This Agreement may be terminated without cause at any time prior to completion of SURVEYOR'S services either by CLIENT or by SURVEYOR, upon seven days written notice to the other at the address of record. Termination shall release each party from all obligations of this Agreement, except as specified in paragraph VII.B below.

- B. COMPENSATION PAYABLE ON TERMINATION: On Termination, by either CLIENT or SURVEYOR, CLIENT shall pay SURVEYOR the full amount specified in paragraph II, with respect to any Surveying Services performed to date of termination (including all Reimbursable Expenses incurred).
- VIII. SUCCESSORS AND ASSIGNS: CLIENT and SURVEYOR each binds himself, and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither CLIENT nor SURVEYOR shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than CLIENT and SURVEYOR.
- IX. SPECIAL PROVISION: This instrument contains the entire Agreement between CLIENT and SURVEYOR, except as additionally stated below: Attached letter Proposal No 2023-WPI OLD SETTLER PARK AREAS 3 5 TOPO-TREE SURVEY dated July 10, 2023 forms a part of this agreement.
- X. INVALIDATION: If this Agreement is not executed by CLIENT within 30 days of the date tendered, it shall become invalid unless SURVEYOR extends the time in writing.
- XI. MODIFICATIONS: No one has authority to make variations in, or additions to the terms of this Agreement on behalf of SURVEYOR other than one of its Officers, and then only in writing signed by him.

Waeltz & Prete, Inc.	Diamond Surveying, Inc.
Ву:	By: Shablef
Printed name:	Shane Shafer, R.P.L.S.
Date:	Date: July 10, 2023

# Diamond Surveying, Inc. SHANE SHAFER, R.P.L.S., PRESIDENT 116 SKYLINE ROAD, GEORGETOWN, TX 78628 OFFICE: (512) 931-3100 T.B.P.L.S. Firm No. 10006900

#### STANDARD RATE SCHEDULE

Effective January 1, 2020, the following rates apply to work performed on a hourly-charge basis.

#### **DIRECT LABOR**

#### **OFFICE PERSONNEL SERVICES**

Classification	Rates
Registered Professional Land Surveyor	
Project Manager	\$140.00 per hour
Project Surveyor	. \$110.00 per hour
Senior CADD Technician.	

#### **FIELD PARTY SERVICES**

Classification	Rates
1-Man Field Party	\$120.00 per hour
2-Man Field Party	\$160.00 per hour
3-Man Field Party	\$190.00 per hour

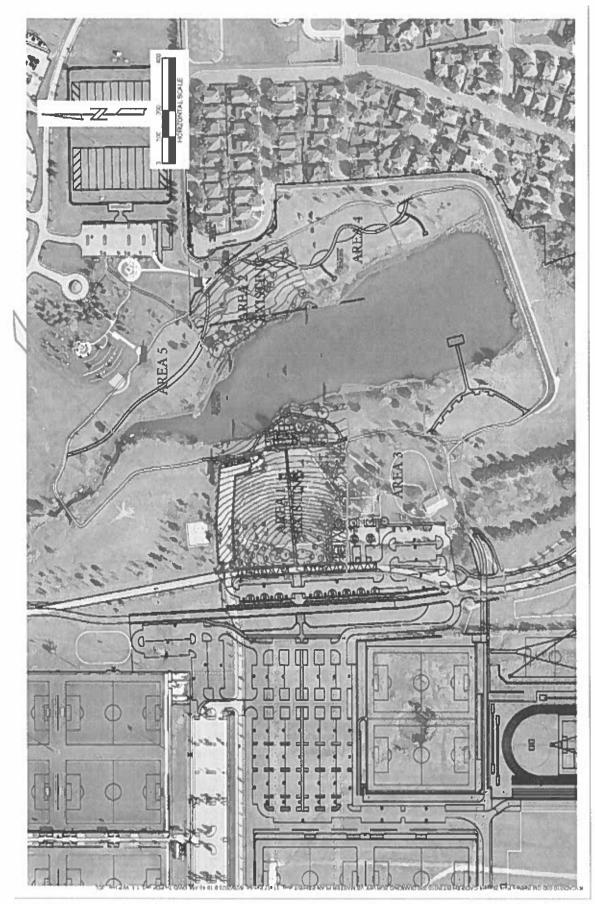
#### **DIRECT EXPENSES**

#### Notes:

Field Party rates include conventional equipment, supplies and survey vehicles. Excessive use of stakes, lathes, etc., will be charged at cost.

A minimum of two (2) hours field party time charge will be made for show-up time and return to office, resulting from inclement weather conditions, etc.

Field Party stand-by time will be charged at the above-shown appropriate rates.



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EXHIBIT 'B' -LINE ITEM 12

# Architectural Proposal



### **Prepared for:**

TonyPrete Waeltz & Prete, Inc.

## Prepared by:

RyanHansanuwat MODE Design Company RE: Fee Proposal for Lakeview Pavilion in Round Rock, TX

Please find enclosed our detailed proposal for your kind consideration.

MODE Design Company is pleased to submit the following proposal for Architectural Consulting and Engineering Services.

The following proposal is based on the understanding that this project will be an approximate 12,000 sf open-air, split-level pavilion and single story restroom building.

Basic services include schematic design, code analysis, design documents, construction documents to be used for permitting, bidding and construction. Basic services also include bidding assistance and construction observation services as described herein. The construction documents will include industry standard architectural, structural engineering, mechanical engineering, electrical engineering and plumbing engineering drawings and specifications.

Civil Enginering, Geotechnical, Surveying, Audio Visual, Security and Information Technology (IT) design services are not included in this contract. Architectural fees include all necessary coordination between disciplines with the owner's engineers of choice.

#### Yours Truly, Ryan Hansanuwat

Architectural Design	Price	Subtotal
Schematic Design - Architecture*	\$27,500.00	\$27,500.00
Design Development - Architecture	\$32,500.00	\$32,500.00
Construction Documents - Architecture	\$55,000.00	\$55,000.00
Bidding & Permitting - Architecture	\$9,500.00	\$9,500.00
Construction Observation - Architecture	\$25,000.00	\$25,000.00
Engineering		
Structural Engineering	\$46,000.00	\$46,000.00
Mechanical, Electrical and Plumbing Engineering	\$16,000.00	\$16,000.00
	Subtotal	\$211,500.00
	Total	\$211,500.00



Additional Services: Schematic Design of Stage Structure - \$9,500.00 Remaining scope to complete design of stage structure TBD upon approval of Stage Schematic Design



#### **GENERAL PROVISIONS**

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees directly related to the project as identified below:

- 1. Fees paid for securing approval of authorities' jurisdiction over the project; including but not limited to: TAS registration, review or inspection fees.
- 2. Reproductions, plots, standard form documents, travel, postage, handling and delivery of Instruments of Service;
- 3. Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner / Contractor:

Reimbursable Expenses are billed at 1.15 times the expense incurred by the Architect.

NOTICE: The building owner is required by Section 469.105 of 2012 Texas Accessibility Standards to have building inspected for compliance with the standards and specifications no later than the first anniversary of the date of construction is completed. This is not the responsibility of MODE Design Company.

#### **HOURLY RATE SCHEDULE**

Principal \$250.00
Project Manager \$200.00
Interior Designer \$160.00
Designer \$130.00
Administrative/Clerical \$110.00

#### Statement of Jurisdiction

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas. P.O. Box 12337, Austin, TX 78711 / 512-305-9000.



#### **BASIC SERVICES DESCRIPTION**

#### Schematic Design

The Architect shall review the program with the Owner and evaluate potential space plan configurations. The Architect will perform an initial analysis of the layout to conform with applicable codes and regulations. The Schematic Design documents shall consist of drawings and other documents including a two-dimensional floor plan layout of the space, interior elevations of walls and/or millwork, reflected ceiling plan and a finishes narrative. Two (2) revisions of design resulting in an increase in scope via increase in square footage over 10% or construction cost of 10% are anticipated in this phase. Additional changes beyond initial two (2) revisions will be charged at the hourly rate listed above.

#### **Design Development**

Based upon the Owner's approval of the Schematic Design Documents, the Architect shall produce Design Development documents that will consist of further detailing of the selected design. Design Development Documents shall consist of plans, sections, elevation, typical construction details and layouts of systems such as structural, mechanical and electrical systems. One (1) revision of design resulting in an increase in scope via increase in square footage over 10% or construction cost of 10% are anticipated in this phase. Additional changes beyond initial revision will be charged at the hourly rate listed above.

#### Construction Documents

Based upon the Owner's approval of the Design Development Documents, the Architect shall incorporate the design into a working set of construction documents that will be used for the construction of the space and for bidding and permitting. The Construction Documents shall consist of Drawings and/or Specifications setting forth the design intent, quality of materials and systems and other requirements for the project. Zero (0) revisions of design resulting in an increase in scope via increase in square footage over 10% or construction cost of 10% are anticipated in this phase. Additional changes at this phase will be charged at the hourly rate listed above

#### **Bidding and Permitting**

The Architect shall assist the owner in reviewing the list of potential bidders and responding to bidder questions as needed. Owner shall be responsible for securing all permits required for construction and as needed for their business function. Architect shall assist owner in providing information needed by the authority having jurisdiction to obtain a building permit on an as needed basis.

#### **Construction Observation**

The Architect shall advise and consult with the Owner during construction to ensure design intent, quality of materials and system and other requirements for the project are being met by the contractor. The Architect shall visit the site as needed to review any conditions the Owner requires assistance on. As needed, the Architect shall review applications for payment provided by the Contractor to review conformance with the Contract Documents and construction progress.

As needed, the Architect shall review submittals provided by the Contractor to review for conformance with the design intent and quality of materials and/or systems.

The building owner is responsible for scheduling the inspection of the building by a Registered Accessibility Specialist within one year of completion of construction.



## **PROJECT SCOPE AND EXCLUSIONS**

See attached for assumed project scope.



#### **PAYMENT TERMS**

We propose the following payment terms:

**Monthly Invoicing** 

Invoices will be submitted monthly corresponding to percentage of phase completed. Invoice

#### PROPOSAL ACCEPTANCE

If this proposal is acceptable, please sign below. Signature of Part I also acknowledges and accepts the terms and conditions set forth in Part II of this proposal. These documents will serve as our contract for this project unless superseded by a standard form agreement. We appreciate your consideration and look forward to working with you.

TonyPrete

Waeltz & Prete, Inc.



#### **TERMS AND CONDITIONS**

RHad Enterprises, Inc, dba MODE Design Company
PROFESSIONAL SERVICES AGREEMENT
PART II – TERMS AND CONDITIONS

WHEREAS: This professional Services Agreement is made and entered into between TonyPrete (Client) and MODE Design Company (Architect) a Texas Corporation. This agreement consists of two parts: Part I – Proposal – Scope of Services and Compensation. Part II – Terms and Conditions.

#### **ARTICLE I: PROFESSIONAL SERVICES**

- 1.1 Services. In connection with the property described in the Proposal ("Property"), Architect shall render professional services ("Services") for the project described in the Proposal ("Project") as outlined in the Proposal and any Amendments.
- 1.2 Agreement. The Professional Services Agreement include the Proposal dated 7/11/2023, Amendments to the Proposal, and these Terms and Conditions (collectively, the "Agreement").

#### **ARTICLE 2: PROPOSALS**

- 2.1 Scope. The Proposal(s) shall identify the specific scope of Services to be performed and the amount and type of compensation for the specific services. Any services not specifically identified in the Proposal are excluded unless added as additional services with additional compensation to the Architect.
- 2.2 Acceptance of Agreement. Client shall authorize, and Architect shall commence work, upon Architect's receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid.

#### **ARTICLE 3: CHANGES**

- 3.1 Changes. The Architect and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to services to be performed. If such changes cause an increase or decrease in the Architect's cost of, or time required for, performance of any services under individual Proposal(s), an equitable adjustment shall be made and reflected in a properly executed Amendment.
- 3.2 Regulatory Changes. In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services



provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

- 3.3 Interpretations. In the event that changes or edits to previously prepared Instruments of Services required by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.
- 3.4 Client Changes. In the event that changes to the Initial Information identified in Section 5.1, previous instructions or approval given by the Client, or a material change in the Project including size, quality, complexity, Client's schedule or budget for Cost of Work, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.
- 3.5 Delays. In the event that additional services are necessitated by decisions of the Client not rendered in a timely manner or any other failure of performance on the part of the Client, or Client's consultants or contractors, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

#### **ARTICLE 4: THE TERM**

4.1 Term. Architect shall be retained by the Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Architect's Services are terminated under provisions of the Agreement. Architect will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Architect shall not be liable or responsible for any delays caused by circumstances beyond Architect's control.

#### **ARTICLE 5: DUTIES**

- 5.1 Initial Information. Client shall provide information in a timely manner for the Project including a written program, design and construction schedule, project constraints and criteria and any special criteria pertaining to the Project. Client shall furnish surveys, test, inspections, reports required by law, and the services of geotechnical engineers to include test boring, determinations of soil bearing values, percolation tests, evaluations of hazardous materials with written reports and recommendations.
- 5.2 Budget. Client shall establish a budget for the Project, including (1) the budget for the Cost of Work, (2) the client's other costs, (3) reasonable contingencies related to all of these costs. The Client shall update the budget for the Project as necessary throughout the duration of the Project until final completion. If the Client significantly increases or decreases the budget for the Cost of



Work, the Client shall notify the Architect. The Client and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

- 5.2.1 If, through no fault of the Architect, construction bidding has not commenced within 90 days after the Architect submits the Construction Documents, the Client's budget for the Cost of Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.
- 5.2.2. If at any time the Architect's estimate of the Cost of Work exceeds the Client's budget, the Architect shall make appropriate recommendations to the Client to adjust the Project's size, quality, or budget.
- 5.2.3. If the Client's budget for the Cost of Work at the conclusion of the Construction Documents phase is exceeded by the lowest bona fide bid, the Client shall
  - 1. Give written approval of an increase in the budget for the Cost of Work;
  - 2. Authorize rebidding the Project within a reasonable time;
  - 3. Terminate the project
  - 4. Revise the Project program, scope or quality as required to reduce the Cost of Work
  - 5. Implement any other mutually acceptable alternative
- 5.2.4. If the Client chooses to reduce project scope due to the lowest bona fide bid exceeding the Client's budget due to market conditions the Architect could not reasonably anticipate, the Client shall compensate the Architect for the modifications as an Additional Service.
- 5.3. The Client shall obtain the following consultants:
  - 1. Geotechnical Engineer
  - 2. Civil Engineer
  - 3. Surveyor
- 5.4 Architect shall retain the following consultants:
  - 1. Mechanical Engineer
  - 2. Electrical Engineer
  - 3. Plumbing Engineer
  - 4. Structural Engineer
- 5.5 Architect shall coordinate its services with those provided by Client and Client's consultants, but shall not be responsible for the accuracy, completeness, and timeliness of services and information provided by Client and Client's consultants.
- 5.6 Architect shall perform services consistent with the professional skill and care ordinarily provided by architects practicing in the same locality under the same circumstances. The Architect shall perform its services in a timely manner consistent with such professional skill and care ordinarily provided by architects practicing in the same locality under the same circumstances.
- 5.7 The Architect shall not be responsible for a Client's directive or substitution, or for the Client's acceptance of non-conforming work, made or given without the Architect's written approval.



- 5.8 The Architect shall have no control over, charge or, or responsibility for the construction means, methods, techniques, sequences or procedure, or for safety precautions and programs in connection with the Work, nor shall Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.
- 5.9 The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
- 5.10 The Architect shall provide the following limited Construction Phase services and if limits have been reached, Architect shall notify Client in writing:
  - 1. Two (2) reviews of each Submittal
  - 2. Twelve (12) visits to the site during Construction
  - 3. Two (2) visits to site to verify substantial completion
  - 4. Two (2) visits to site to verify final completion
- 5.11 In the event the architect is not retained to provide Construction Obervation services the Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and the Client waives any claims against Architect that may be in any way connected thereto.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the Architect.

If the Client requests in writing that the Architect provide any specific construction phase services, and if the Architect agrees in writing to provide such services, then they shall be compensated for as Additional Services as provided in Section.

#### ARTICLE 6: COPYRIGHTS AND LICENSES

- 6.1 The Architect and Architect's Consultants listed above shall be deemed the authors and owners of their respective Instruments of Services, and shall retain all common law, statutory and other reserved rights, including copyrights.
- 6.2 Architect grants to the Client a nonexclusive license to use the Instruments of Services of the Architect, and Architect's Consultants listed above, solely and exclusively for purposes of construction, using, maintaining, altering and adding to the Project, provided that the Client substantially performs its obligations under this agreement, including prompt payment of all sums due.
- 6.3 In the event that the Client uses the Instruments of Service without the knowledge of the Architect, the Client releases the Architect and Architect's Consultants from all claims and causes of



action arising from such uses. The Client, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and Architect's Consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Client's use of the Instruments of Service.

6.4 Except for the license granted in this Article, no other license or right shall be deemed granted or implied under this agreement. Client shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect.

#### ARTICLE 7: CLAIMS AND DISPUTES

- 7.1 Claims and causes of action arising out of or related to this agreement shall be within the period specified by applicable law, but not more than 10 years after the date of Substantial Completion of the Work.
- 7.2 Any claims, disputes and other matters in question shall be resolved by mediation administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party of this Agreement, and filed with the person or entity administering the mediation.
- 7.3 The parties shall share the mediator's fee and any filing fee equally. The mediation shall be held in the place where the Project is located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 7.4 If parties to not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.
- 7.5 The provisions of this article shall survive the termination of the Agreement.

#### ARTICLE 8: TERMINATION OR SUSPENSION

- 8.1 If the Client fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonconformance and cause for termination of performance of services under this Agreement.
- 8.2 If the Client suspends the Project, the Architect shall be compensated for services performed prior to the notice of such suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.
- 8.3 If the Client suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement.

#### ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.



- 9.2 The Client and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to the Agreement. Neither the Client, nor the Architect shall assign this Agreement without the written consent of the other, except that the Client may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Client's rights and obligations under this Agreement, including any payments due to the Architect by the Client prior to the assignment.
- 9.3 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Architect.
- 9.4 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project Site.
- 9.5 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Client shall provide professional credit for the Architect in the Client's promotional materials for the Project.
- 9.6 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

#### ARTICLE 10: COMPENSATION

- 10.1 An initial payment, as set forth in Part I shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Client's account in the final invoice.
- 10.2 Payment for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Invoice amounts unpaid Thirty (30) days after the invoice date shall bear interest rate of Fifteen (15%) on a monthly basis.
- 10.3 Client shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damage on the Architect, or to offset sums requested by or paid to contractors or consultants for the cost of changes in the Work.

#### **ARTICLE 11: LIMITATION OF LIABILITY**

11.1 In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs



and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officer's, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$100,000, or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

END OF PROFESSIONAL SERVICES AGREEMENT





EXHIBIT 'B' -LINE ITEM 13

July 12, 2023

Mr. Antonio A. Prete, PE Waeltz & Prete, Inc. 211 N. A.W. Grimes Blvd. Round Rock, Texas 78665

EcoLand Design Group, LLC is pleased to submit the following proposal for landscape architecture services for the following project.

Project:

Old Settlers Park – Round Rock – Project A Improvements– The city of Round Rock is proposing to develop Phase 2 of Old Settlers Park which will consist of Joanne Land Playground, Lakeview Pavilion and Restroom, Promenade Central, Lakeview Stage Structure and Pedestrian Tunnel under Harrell Parkway as shown on the City of Round Rock conceptual Master Plan. The approximate improvements area is +/- 13 acres and located just due west of the existing Bright Lake.

#### **Scope Summary:**

- a. Site plan layout and design coordination with W-Pinc team and City of Round Rock.
- b. Hardscape Design: Fine Grading and coordination with civil / design team
- c. Softscape / Planting Design
- d. Irrigation Design
- e. Lighting Design: includes coordination between lighting designer and design team.
- f. Specifications: provide relevant specifications to be included in overall project manual.
- g. Construction Administration (Bidding and Negotiations, REF, Submittal Review, Site visits, etc).

#### Areas of Service:

- a. **Pedestrian Node** (area coming from parking lot west of elevated road to our scope area). Enhanced paving, landscape, irrigation, and lighting
- b. Widened Pedestrian Corridor running parallel to Harrell Pkwy. Enhanced paving, lighting, landscape, irrigation, seating opportunities, design sequence from parking to corridor
- c. Amphitheater Entry: paving enhancements, landscape, irrigation, lighting
- d. Bathroom Area / Foundation: buffering of bathroom area from rest of site. Don't hide but make less prominent. Landscape, hardscape, lighting and irrigation
- e. Pavilion Plaza / Entry: paving enhancements, hardscape elements (seat walls / planters, etc). landscape, irrigation, lighting
- f. Pavilion Foundation: planting, irrigation, lighting
- g. Seating node transition from pavilion to Amphitheater: hardscape, landscape, irrigation, lighting
- h. Playground / Informal / Transition areas between elements mentioned above: layout of general elements, surface finishes, enhanced paving, landscape, irrigation and lighting opportunities.

#### I. DETAILED SCOPE DESCRIPTION

#### A. Schematic Design

- a. Develop a landscaping program based on the following investigations:
  - 1. Become familiar with the Project site and landscape designs of surrounding buildings.
  - 2. Review soils, slopes and climatic reports for vegetation impact.
  - 3. Review existing vegetation and make general recommendations for removal and/or integration into proposed new landscape improvements.
  - 4. Evaluate site ecology to determine recommended landscaping and irrigation systems.
  - 5. Recommend to the Owner and Team other required tests and investigations for soils, etc. Review reports with the Project team and offer written recommendations to the Owner.
  - 6. Review and assess adjacent properties and their existing landscape/Hardscape features for integration and coordination with the Project's design.
- b. Prepare a complete analysis of all applicable governing codes, statutes and ordinances related to the landscape design for the Project.
- c. Review the existing site conditions and make recommendations for protection, moving and demolition.
- d. Develop a design criteria outline that describes the basic design concepts proposed for the landscaping Project for review by the Owner and team.
- e. Participate and coordinate with the Project team to develop as many Schematic Design concepts as requested by Owner, Engineer, and / or architect and assist the Engineer, Architect and Owner in thoroughly analyzing each concept. Review and make recommendations on the results of such analysis.
- f. Develop Schematic Design drawings and outline specifications describing the scope of the design alternatives selected by the Owner with sufficient information for cost estimating and design development. The Schematic Design documents should describe and illustrate the concept, scale and position of landscaping, irrigation, drainage, hardscape, and site lighting components.
- g. Provide input to and assist Project team as needed. Assist Owner in preparing cost estimates of landscape elements as required.
- h. Prepare a preliminary landscape plan and color presentation materials suitable for submission to review.
- i. Attend Project meetings with the Owner and the Project team as required to complete this phase of the Project.
- j. Prepare a list of value engineering items for consideration by the Owner and the Project team; participate in the evaluation of all value engineering items developed by the Project team to meet the Owner's construction budget.
- k. Revise the Schematic Design submission to incorporate comments by the Owner, Engineer and Architect to achieve a final approved Schematic Design set.

#### **B.** Design Development

- a. After receiving Owner's comments on the Schematic Design, prepare Design Development drawings and an outline specification sufficient to provide the basis for the continuing approval process and to facilitate the preparation of a reliable budget estimate for all construction costs. At a minimum the design should determine and delineate the planning, design, grading, contours, plant selection and recommendations for finishes and materials for all areas.
- b. Prepare a complete plant list with common and botanical names for new and existing material to be retained. All Plant Materials shall be selected for the specific climate and environmental conditions peculiar to the Project site and to each plant's specific location and application. All proposed Plant Materials shall be selected for serviceability and limited maintenance specific to the design condition and to each plant's specific location and application.

- c. Identify specific material or labor items that may require substantial time in ordering or installation, and which could, in turn, delay the timely completion of the Project. If appropriate, advise Owner on pre-selection / advance purchase of Plant Materials.
- d. Coordinate with the Project team to ensure that the design is complete, coordinated, constructible, practical, and cost effective.
- e. At appropriate intervals, provide design sketches for the Owner's review and develop as many design concepts and documents as required to address ongoing value engineering.
- f. Assist in updating cost estimates as needed and coordinate with and provide information to the Owner as necessary.
- g. Refine the design as necessary to meet Owner's approved budget.
- h. Attend Project meetings with the Owner and Project team as required to complete this phase of the Project.
- i. Assist in further value engineering and updating of cost estimates as needed and revise the drawings and specifications as required to incorporate comments by the Owner and to meet the Owner's construction budget.
- j. Revise the Design Development submission for the Project's design to incorporate comments by the Owner to achieve a final approved Design Development set within the Owner's budget.

#### **C. Construction Documents**

- a. After receiving Owner's comments on Design Development, prepare complete, coordinated, constructible, and cost effective Construction Documents including all drawings, specifications, list of recommended Plant Materials, and maintenance specifications necessary for construction and procurement of the Plant Materials and their installation.
- b. Coordinate all landscape design-related issues through the Engineer and with the Project team and other consultants as appropriate and provide all necessary design information and clarifications as may be necessary for the Project team to fully execute the Construction Documents.
- c. Assist in value engineering and updating of cost estimates as needed, and revise the drawings and specifications as required to meet the Owner's construction budget.
- d. Provide monthly issue of in-progress Construction Documents and at other times as directed by the Engineer and Owner for their review and preliminary pricing.
- e. Issue complete and coordinated effective Construction Documents, suitable to completely construct the Project and for obtaining competitive bids from various contractors on basis of such complete documents. Contract Documents may be issued in two or more packages as follows:
  - 1. General Conditions as developed by Project team from an initial draft prepared by the Owner and civil and structural engineering Construction Documents, and
  - 2. All remaining Construction Documents.
- f. Assist in the evaluation of Contractor-suggested cost savings.
- g. Revise Construction Documents as may be required for issue in one or more addenda which shall incorporate Owner selected alternatives and any other revisions from Contractor-initiated cost saving items agreed to by Owner during the bidding process.
- h. Issue complete and coordinated Construction Documents, signed and sealed by all professionals as appropriate (each of whom shall be registered professionals in the state of Texas) for the purpose of obtaining all necessary permits for construction and assist the Architect, Engineer and Owner as necessary to secure such permits. Permit documents may be issued in two or more packages as follows:
  - 1. Civil and structural engineering Construction Documents;
  - 2. All remaining Construction Documents.
- i. Attend Project team meetings as required to complete this phase of the Project.

#### D. Construction Administration

- Assist the Owner and Architect during the bidding process. Attend pre-bid conferences and answer bidders'
  questions. As requested by Owner, review bid requisitions for completeness and correctness and assist in the
  evaluation of bids and recommendations of contract awards.
- b. Participate in pre-construction conferences as required by Owner.
- c. Participate in expedited submittal procedures and the coordination process with the Contractor and subcontractors.
- d. Review and approve or take such other appropriate action as may be necessary on all shop drawings, product data, samples, other submittals and Contractor coordination drawings, for compliance with the Contract Documents.
- e. Review submittals of design build components.
- f. Review and approve the following:
  - 1. Plant Materials at the nurseries, greenhouses, orchards, tree farms and other vendor sites ("Place of Origin") as required; select and tag all Plant Materials at the Place of Origin;
  - 2. Plant Materials at their Place of Origin prior to the materials being shipped to the Project site;
  - 3. Plant Materials again at the Project site prior to their installation; and
  - 4. Plant beds and tree layouts at the Project site.
- g. Coordinate all Services with the Owner, Architect and Project team as applicable.
- h. Provide periodic site observations no less frequent than monthly and as required to meet the progress of the Project. Prepare a written report of each visit informing the Architect and Owner of all relevant events, (such as substantive discussions with Contractor and subcontractors, changes to the construction documents, construction progress, etc.) plus follow up on punch list items as needed.
- i. Provide Project status reports on a regular basis, but no less frequent than monthly, informing Owner and Architect of all relevant events during construction, (e.g. substantive discussions with Contractor and subcontractors, results of coordination process, shop drawing approval status, Request For Information ("RFI") status, changes to the Construction Documents, punch-list, summary lists, etc.).
- j. Issue clarification drawings and respond to RFI requests as required through the Engineer.
- k. Attend Project construction meetings as required and requested by the Owner.
- I. Review the work of and advise the Owner and Project team on quality control activities undertaken by inspection and testing agencies retained by Owner.
- m. If requested by the Owner, review and advise the Owner regarding additional construction costs as submitted by Contractor for their legitimacy and general accuracy.
- n. Provide an extensive final review of the observable landscape/hardscape/irrigation elements of the Project prior to Project substantial completion. Prepare reports of review and follow-up on punch list items that are non-conforming as necessary.
- o. Assist the Owner in the preparation of procurement, purchase and requisition orders for Owner purchased Plant Materials, furnishings, fixtures and equipment.
- p. Assist the Owner to manage and coordinate the receipt, pre-tagging, placement and installation of all Plant Materials, furnishings, fixtures and equipment.
- q. Maintain an updated record of Construction Documents changes and issue a final set when the Project is complete.
- r. Review all Contractor prepared Project record documents and warranties for conformance to the Contract Documents and report findings to the Architect.

#### II. SERVICE FEES

The fees for services listed above will be as follows:

A. Schematic Design: \$10500

B. Design Development: \$15750

C. Construction Documents: \$21000

D. Construction Administration: \$5250

**Total Fees: \$52,500** 

#### III. HOURLY RATES

If additional services are requested the following schedule of rates will apply. Owner / client will be notified if items requested are outside the agreed upon scope of services.

Title	Hourly Rate
Principle Landscape Architect – I	\$135.00
Principle Landscape Architect – II	\$125.00
Senior Project Manager	\$110.00
Project Manager	\$ 95.00
Irrigation Designer	\$ 90.00
Associate Landscape Designer	\$ 80.00
Cadd Draftsman	\$ 55.00
Clerical	\$ 40.00

#### IV. REIMBURSABLE EXPENSES AND ALLOWANCES

All reimbursable expenses and purchased services are invoiced at actual cost + 10%. These include cost of prints, expendables supplies, and travel cost authorized by the client.

Allowance for printing, plots, travel cost, etc. \$ N / A

#### V. CLIENT RESPONSIBILITIES / EXCLUSIONS

The client will be responsible for providing accurate project information, which may include a topographic survey, boundary information, geotechnical report, existing site feature survey (vegetation, existing buildings, etc.), and proposed site features from other consultants (architectural, engineering, mechanical, etc.). The client agrees to provide this information and render decisions expeditiously for the orderly progress of the land planning services.

The client shall retain the services of specialized consultants (structural engineers, civil engineers, etc.) when such services are deemed necessary by the landscape architect.

Exclusions include: Overall ADA route approval, Water Features, License Agreements, trade permits

#### VI. FINAL ACCEPTANCE

If you have any questions regarding our proposal please don't hesitate to contact us. We look forward to participating with you on this project and we appreciate the opportunity to be of service.

Sincerely,



Bradley (BJ) Jones, *PLA* Partner

Accepted By:	Date:



July 11, 2023

#### SCI ENGINEERING, INC.

**EARTH • SCIENCE • SOLUTIONS** 

GEOTECHNICAL ENVIRONMENTAL NATURAL RESOURCES CULTURAL RESOURCES CONSTRUCTION SERVICES

EXHIBIT 'B' -LINE ITEM 14

Antonio A. Prete, P.E. Waeltz & Prete, Inc. 211 North A.W. Grimes Boulevard Round Rock, Texas 78665

RE: Proposal for Geotechnical Services - Revised

Old Settler's Park - Lakeview Upgrades

Round Rock, Texas SCI No. 2023-0933.10

#### Dear Antonio Prete:

SCI Engineering, Inc. (SCI) is pleased to provide this revised Geotechnical Services proposal for the above referenced project. The purpose of our geotechnical services will be to explore the subsurface conditions and develop design and construction recommendations for the foundations, hardscapes, and earth-related phases of the project.

#### PROJECT DESCRIPTION

SCI understands that the proposed project will include enhancements and upgrades to the Lakeview portion of Old Settlers Park located at 1301 Harrell Parkway, Round Rock, Texas. The site currently is mostly greenspace with parking to the north and along the east of the site. A playground is located in the center of the site and a pavilion is located at the south-central portion of the site. The site appears to slope downwards from the east towards the existing lake to the west, with approximately 25 feet of change in elevation.

Planned amenities include a stage structure measuring approximately 10,000 square-feet (SF) in plan area located along the east of the site. A two-story, open-air pavilion, measuring approximately 11,000 SF in plan area, and a new restroom building, measuring approximately 5,000 SF, are also planned near the center of the site. Stage related improvements are also anticipated, including a bulkhead, measuring approximately 500 feet in length, along the pond edge behind the stage area, as well as paved pathway improvements for stage equipment access.

Detailed structural loads were not available at the time of this proposal; however, we assume that the structures will be lightly to moderately loaded, with column loads of less than 150 kips and wall loads of less than 5 kips per linear foot. It is anticipated that the stage will be supported on a shallow footing foundation system utilized in conjunction with a soil supported floor slab, stem wall/retaining wall construction may be needed within elevated structure areas. The pavilion structure is anticipated to be supported on a shallow footing foundation system utilized in conjunction with a soil supported floor slab, and the restroom is anticipated to be of slab-on-grade construction. The bulkhead maybe supported on a deep foundation system to provide lateral support. Grading details were not available at the time of this proposal; however, assumed cuts and fills on the order of 5 feet or less will be required.

#### **GEOTECHNICAL SERVICES**

SCI proposes to perform ten borings for the geotechnical field investigation; the locations will be marked in the field utilizing a global positioning system. We will interpolate surface elevations at the boring locations using the most recent topographic plan made available to us. If more accurate data is required, we can coordinate with the project surveyor so they can evaluate the surface elevations at the performed boring locations. A summary of the proposed boring purpose, quantity, and depths are summarized in Table 1.

Private utilities, which will not be marked by Texas One-Call, may be present at, or near, the proposed boring locations. A private utility locate should be performed if the owner cannot mark the location of these utilities or provide plans showing their location. SCI can provide a private utility locate for an additional fee of \$1,000.00.

Boring Location	Quantity	Boring Depths (feet)	Drilling Footage (feet)	
Stage	2	15	30	
Pavilion	2	15 to 25	40	
Restroom	1	15	15	
Pathway Improvements	2	5	10	
Pond Bulkhead	3	25	75	
Total	10	_	170	

Table 1 - Test Borings

The borings will be sampled with Standard Penetration Tests (SPTs) or relatively undisturbed Shelby tube samples at 2-foot intervals in the upper 10 feet and at 5-foot intervals thereafter. Rock coring is anticipated within the 25-foot borings to determine rock quality and strength. Other borings may be terminated at shallower depths if competent bedrock is encountered. An SCI field scientist or engineer will log the borings and direct field sampling. The boreholes will be backfilled with soil/rock cuttings after 24-hour groundwater readings.

Upon completion of the field exploration, the samples will be transported to our laboratory for classification and characterization. Testing may include, but not limited to, moisture content tests to determine natural soil saturation, Atterberg limits tests to aid in classification and assess the volume change characteristics of the subgrade soils, natural density tests, and/or unconfined compression tests to provide additional strength information.

The results of the field exploration and laboratory testing will be analyzed by our geotechnical engineer. Our findings and recommendations, along with supporting data, will be presented in a formal report, which will address each of the following:

- Allowable bearing pressures and depths for shallow, spread footing and slab-on-grade, foundation support;
- Deep foundation recommendations including; allowable net bearing pressure and skin friction values, anticipated bearing elevations and element spacing, and recommended parameters for the lateral analysis (L-Pile Design) of deep foundations;
- Seismic coefficients for building design according to the appropriate International Building Code;

- Anticipated settlement based on general soil characteristics;
- Shrink/swell potential of subgrade soils;
- Floor slab design criteria;
- Lateral earth pressures for each soil type encountered for the design of minor stem walls;
- Hardscape paving design recommendations, based on local experience and general soil types encountered;
- General location, description, and disposition of existing fill materials, if encountered;
- Influence of groundwater and/or bedrock, if encountered, on design and construction;
- Structural fill considerations, including the suitability of on-site soils for use and engineering criteria for placement; and
- Site development and geotechnical construction recommendations.

#### COST AND SCHEDULE

SCI will provide the above-mentioned geotechnical services for the lump-sum fees detailed in Table 2.

Table 2 - Services and Fees

Service	Fee (\$)
Geotechnical Exploration and Report	10,800.00
Private Utility Locate (if required)	1,000.00

We will schedule and coordinate the fieldwork following your authorization of this proposal, and should be able to start drilling the site, weather and coordination permitting, about seven to ten business days thereafter. Drilling operations should be completed in two days. Laboratory testing and report preparation will require approximately three weeks following the field exploration; however, verbal findings should be available within a few days after completion of the drilling.

Our estimated schedule assumes SCI personnel will be allowed access to the site and structure within five working days from formal authorization. While SCI feels this estimated timeframe is sufficient to complete our proposed scope, factors beyond our control related to current events (i.e., quarantines, government restrictions to movement, large scale impact to SCI or subcontractor workforce) may impact this schedule. If such an issue arises, SCI will notify you as soon as possible.

You will be invoiced for these fees upon project completion and payment is due upon receipt of the invoice. To facilitate prompt payment, SCI accepts Visa and MasterCard in addition to normal payment methods. If you wish to pay via credit card, please contact the undersigned for specific instructions. This fee does not include title/conveyance reports. If this is required, please make a notation on the enclosed Acceptance of Proposal for Professional Services sheet. If, during the course of this investigation, SCI has reason to believe the actual fee for services could exceed the estimated cost by more than ten percent, SCI will contact you for authorization to continue.

#### CONDITIONS AND CONSIDERATIONS

- The above fee is based on a maximum of 170 feet of soil drilling. If the encountered subsurface conditions indicate that more than the planned total of soil drilling would be beneficial, and you authorize additional exploration, it would be provided for \$50.00 per foot. No costs associated with permits are included in this proposal.
- Our fee, which is valid for up to 30 days from the date of this proposal, does not include
  out-of-scope services that might be added during the course of our work; nor does it include
  additional services that might be requested following completion of our report, such as attendance
  at project meetings; subsequent consultation; or review, signing, and sealing of project plans.
  Such services will be provided in accordance with the enclosed Acceptance of Proposal for
  Professional Services, and billed at our then-current hourly rates, or as otherwise agreed.
- This proposal assumes that you will provide site access authorization, including access to the
  proposed boring locations for a conventional, rubber-tired, drill rig. No clearing, grading, or other
  removal of site obstacles, has been included in this proposal.
- We will contact the Texas 811 One-Call system to have the locations of public utilities marked; however, privately owned, below-grade, utility lines within the project area are the responsibility of the owner. We shall only be responsible for utilities brought to our attention prior to drilling. SCI can provide a private utility locate, if requested, for the fee shown in Table 2.

#### CLIENT RESPONSIBILITIES AND AUTHORIZATION

If the work order outlined herein is acceptable, please provide formal authorization to proceed by completing, signing, and returning the enclosed Acceptance of Proposal for Professional Services sheet. This sheet provides important information regarding report distribution and invoicing. Formal authorization is necessary prior to initiation of the activities outlined herein. SCI's services will be performed for the signatory of the enclosed form. Written consent must be provided by SCI should anyone other than the client (signatory) wish to excerpt, or rely on, the results of our activities. The enclosed General Terms and Conditions will also apply to any future services you authorize for this project.

Thank you for the opportunity to submit this proposal. If you have any questions regarding this proposal, or desire to modify the proposed scope, please do not hesitate to call.

Respectfully,

SCI ENGINEERING, INC.

Gabrielle M. Kowalik

Staff Engineer

Tonya S. Sonsteng, F

Regional Manager

GMK/TSS/snp/mas

Enclosures:

Acceptance of Proposal for Professional Services

General Terms and Conditions



#### SCI ENGINEERING, INC.

150 Texas Avenue, Suite 105 Round Rock, Texas 78664 512-996-9199 www.sciengineering.com

#### ACCEPTANCE OF PROPOSAL FOR PROFESSIONAL SERVICES

Project Name:	Old Settler's Park – Lakeview Upgrade	s - Revised Geotechnical Services				
Project Number:	2023-0933.10 / GMK					
Date:	July 11, 2023					
Fee: Pleas	e indicate your selection by placing a check n	nark in the appropriate box below:				
	Geotechnical Exploration and Report	\$10,800.00				
	Private Utility Locate (if required)	\$1,000.00				
Please provide formal and conditions will app	authorization to proceed by completing, signly to the services outlined in the accompan	ning, and returning this form. The attached terms ying proposal.				
Accepted By:						
Name and Title:	A	ddress:				
Signature:	C	ity, State, Zîp:				
Company Name:	T	Telephone:				
Date:	E	mail:				
Party responsible for	payment: (if different than Accepted By					
Name and Title:	A	ddress:				
Signature:	Ci	ty, State, Zip:				
Company Name:		elephone:				
Date:	E	mail:				
Report Distribution (	Note: Additional printed report copies at	ter final submittal will be billed at \$25.00 each)				
Company and Contact	Name: Address (Printed) or Email	(Electronic): No. Printed Reports				

#### **NOTICE TO OWNER:** (FOR SITES IN MISSOURI ONLY)

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429.RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOU PAYING FOR LABOR AND MATERIAL TWICE.

#### SCI ENGINEERING, INC.



150 Texas Avenue, Suite 105 Round Rock, Texas 78664 512-996-9199 www.sciengineering.com

#### GENERAL TERMS AND CONDITIONS

- 1. ACCEPTANCE OF AGREEMENT The terms and conditions of the agreement between the client and SCI ENGINEERING, INC. (hereinafter called SCI) are detailed below and have been established to allocate risks between both. For the purposes of convenience, the client may choose to orally authorize our service, in which case the client agrees that the verbal agreement constitutes formal acceptance of the terms and conditions detailed below. Subsequent to an agreement by both parties to perform the services, modifications to the terms and conditions are prohibited.
- 2. SITE ENTRY You, the Client, will provide for right of entry of SCI or employees of firms working under the direction of SCI, and all necessary equipment, in order to perform the work. Although SCI will exercise reasonable care in performing its services, the Client understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this agreement. The client agrees, to the fullest extent permitted by law, to indemnify and hold harmless SCI and its subconsultants against any damages, liabilities, or costs, arising or allegedly arising from procedures associated with testing or investigative activities to the fullest extent permitted by law. If you desire or require us to restore the site to its former condition, upon written request, we will perform such additional work as is necessary and you agree to pay all costs incurred.
- 3. SUBSURFACE STRUCTURES OR UTILITIES The Client will furnish to SCI information identifying the type and location of utility lines and other man-made objects beneath the site's surface. SCI will take reasonable precautions to avoid damaging these man-made objects. You agree to waive any claim against SCI, and to defend, indemnify and hold SCI harmless from any claim or liability for injury or loss allegedly arising from SCI's damaging underground utilities or other man-made objects that were not called to SCI's attention, or which were not properly located on plans furnished to SCI.
- 4. SAMPLES Soil, rock, water, or other samples obtained from the project site are your property. SCI shall preserve such samples for no longer than thirty (30) calendar days after the issuance of any document that includes the data obtained from them, unless other mutually agreed arrangements are documented.

Concrete test specimens will be discarded after testing. If project specification strengths are met, "hold" cylinders will be discarded at that time.

If in SCI's opinion any of the samples collected may be affected by regulated contaminants, SCI shall package such samples in accordance with applicable law and client shall arrange for lawful disposal procedures. SCI shall not, under this agreement, arrange for or be responsible for the disposal of substances affected by regulated contaminants. Furthermore, unless detailed in a specific work scope, SCI is not responsible for any soil cuttings or produced groundwater generated for the purpose of sample collection that may be affected by regulated contaminants that are left at a job site and were generated for the collection of soil and groundwater samples. SCI will, at the client's request, help the client identify appropriate alternatives for the off-site treatment, storage, or disposal of these materials, for additional fees.

#### 5. GENERAL LIABILITY AND LIMITATION

SCI agrees to hold you harmless and to indemnify you on account of any liability due to bodily injury or property damage to the extent directly caused by our negligent operational acts, but such hold harmless and indemnity will be limited to that covered by our comprehensive general liability insurance. At your request, SCI will provide certificates evidencing such coverage and will purchase

additional limits of liability that you may require as a separate cost item to be borne by you.

You shall not be liable to SCI and SCI shall not be liable to you for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by you or SCI, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damage that any party may have incurred from any cause of action, including, but not limited to negligence, strict liability, breach of contract, or breach of warranty.

6. SHARED RISK ALLOCATION The Client and SCI agree to allocate certain of the risks so that, to the fullest extent permitted by law, SCI's total aggregate liability to the Client is limited to \$50,000.00 for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's and expert witness' fees) arising out of this AGREEMENT from any cause or causes. Such causes include, but are not limited to, SCI's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent, misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. Higher limits may be available upon request and additional negotiated fee.

Limitations on liability, waivers and indemnities in this Agreement are business understandings between the parties and shall apply to all legal theories of recovery, including breach of contract or warranty, breach of fiduciary duty, tort (including negligence), strict or statutory liability, or any other cause of action. You agree that you will not seek damages in excess of the contractually agreed-upon limitation directly or indirectly through suits against other parties who may join the Consultant as third-party defendant. None of the insurance or indemnity obligations under this agreement shall be deemed to be with a waiver of this limitation of liability provision.

- 7. INVOICES You will make all payments in accordance with SCI's invoices, and payment is due upon receipt of invoice. A fee of 1½ percent per month will be payable on any amounts not paid within thirty (30) days, payment thereafter to be applied first to accrued interest and then to your unpaid amount. You agree to pay invoices under these terms and to bear collection fees, court costs, or any other reasonable expense involved in the collection of amounts not paid.
- 8. HAZARDOUS MATERIALS; NOTIFICATION OF AND DISCOVERY OF When hazardous materials are known, assumed, or suspected to exist at a site, SCI is required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures that SCI deems prudent to help minimize physical risks to employees and the public. You warrant that you have provided to SCI all available information about type and location of known and suspected hazardous materials on, under, or adjacent to the project site.

The discovery of unanticipated hazardous or suspected hazardous materials will constitute a changed condition mandating termination of services if SCI and you are unable to renegotiate the scope of service in a timely manner. SCI will notify you as soon as practically possible should SCI encounter unanticipated hazardous or suspected hazardous materials.

The discovery of unanticipated hazardous or suspected hazardous materials may make it necessary for SCI to take measures that in SCI's professional opinion are needed to help preserve and protect the health and safety of SCI's personnel and of the public, and/or to preserve and protect the environment. As a condition precedent to the provision of service for this project, you agree to compensate SCI for the additional fees and costs associated with any such measures and further agree to defend, indemnify, and hold harmless from any claim or liability for injury or loss arising from SCI's encountering unanticipated hazardous or suspected hazardous materials.

- 9. CONTAMINATION OF AN AQUIFER Unavoidable contamination of soil or groundwater may occur during subsurface exploration, as when drilling or sampling tools penetrate a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading contaminants. Because subsurface exploration is an essential aspect of the services that SCI will provide on your behalf, you shall indemnify, defend, and hold SCI harmless from any claim or liability for injury or loss which may arise as a result of contamination allegedly caused by subsurface exploration to the fullest extent permitted by law.
- 10. SITE SAFETY With respect to project site safety, SCI shall be responsible only for the on-site activities of its employees and subcontractors, and this responsibility shall not be construed to relieve you or the general contractor from your obligation to maintain a safe project site. Neither the professional activities of SCI, nor the presence of SCI's employees or subcontractors shall be construed to imply that SCI has any responsibility for any methods of work performance, procedures, superintendence, sequencing of operations, or safety in, on, or about the project site other than SCI's and SCI's subconsultants. You agree that the general contractor is responsible for project site safety, and warrant that this intent shall be made evident in your agreement with the general contractor.
- 11. CONSTRUCTION COST ESTIMATES An opinion of construction cost prepared by SCI represents our judgment as a design professional and is supplied for your general guidance only. Since we have no control over the cost of labor and material, nor over competitive bidding or market conditions, we do not guarantee the accuracy of our opinion as compared to other sources, such as, contractor bids of actual cost to the owner.
- 12. DEFECTS IN SERVICE You and your personnel, contractors, and subcontractors shall promptly report to SCI any defects or suspected defects in SCI's work, in order that SCI may take prompt effective measures which in SCI's opinion will minimize the consequences of any such defect.
- 13. **TERMINATION** Any or all services being provided for you by SCI under these General Terms and Conditions or under separate contract may be terminated by either party upon seven (7) days prior written notice. In the event of termination, SCI shall be compensated by you for all services performed up to and including the termination date, including reimbursable expenses.
- 14. FORCE MAJEURE Any delays or failure of performance by SCI shall not constitute a default under this Agreement, if such delays or failures of performance are caused by occurrences beyond the reasonable control of SCI. Performance under this Agreement shall resume promptly once the cause or delay or failure ceases and SCI's schedule for performance shall be extended to the extent of such delay. Each party shall take reasonable steps to mitigate the impact of any such delay or failure.
- 15. ENVIRONMENTAL SITE ASSESSMENT An Environmental Site Assessment is conducted to render an opinion about the possibility of regulated contaminants being present on, in, or beneath the site specifically at the time services were conducted. Client understands that no matter how thorough an Environmental Site Assessment is, SCI cannot know or state factually that a site is unaffected by reportable quantities of regulated contaminants. Furthermore, even if SCI believes that reportable quantities are not present, the client bears the risk that

such contaminants may be present or may migrate to the site after the study is complete. Likewise, the client agrees to hold SCI harmless from any claim or liability for injury or loss arising from the unanticipated discovery of hazardous materials or suspected hazardous materials to the fullest extent permitted by law.

- 16. FAILURE TO FOLLOW RECOMMENDATIONS SCI disclaims any and all responsibility and liability for problems that may occur during implementation of SCI's plans, specifications, or recommendations when SCI is not retained to observe such implementation.
- 17. ALTERATION OF INSTRUMENTS OF SERVICE Client agrees that designs, plans, specifications, reports, proposals, and similar documents prepared by SCI are instruments of professional service, and as such, they may not under any circumstances be altered by any party except SCI. Client warrants that SCI's instruments of service will be used only and exactly as submitted by SCI. Accordingly, Client shall waive any claim against SCI and shall, to the fullest extent permitted by law, indemnify, defend, and hold SCI harmless of any claim or liability for injury or loss arising from unauthorized alteration of SCI's instruments of service.
- 18. MOLD DISCLAIMER The services performed by SCI, unless specifically addressed in our scope of services, are not intended to take into account indoor amplification of mold. SCI's services may comment on depth to groundwater and site drainage, but in no instance is this to be interpreted that we were specifically intending to reduce moisture contents and/or humidity measurements within the structure as they may relate to mold. Client understands our services, unless specifically expressed in our work scope, are in no way intended to address the potential for mold infestation, and, as such, agrees to indemnify and hold SCI harmless from any claim alleging that SCI's services caused or aggravated a mold infestation to the fullest extent permitted by law.
- 19. OTHER PROVISIONS You agree that this contract is entered into by the parties for the sole benefit of the parties to the contract, and that nothing in the contract shall be construed to create a right or benefit for any third party.
- a. You agree that any and all limitations of SCI's liability and indemnifications by you shall include and extend to those individuals and entities SCI retains for performance of the services under this Agreement, including but not limited to SCI's officers, directors, and employees and their heirs and assigns, and SCI's subconsultants.
- b. In an effort to resolve any conflicts that arise during or following completion of the project, you and SCI agree that all disputes between us arising out of or related to this Agreement shall be submitted to non-binding mediation as a condition precedent to institution of any formal legal proceeding, unless the parties mutually agree otherwise in writing.

  c. THE PARTIES TO THIS CONTRACT HEREBY
- c. THE PARTIES TO THIS CONTRACT HEREBY AGREE TO SUBMIT ANY SUCH DISPUTE TO THE CIRCUIT COURT OF ST. CHARLES COUNTY, STATE OF MISSOURI.
- d. Test borings and test pits are an accepted and informative means of subsurface exploration. However, in the nature of things, they cannot indicate with absolute certainty the nature of the subsurface conditions between and sample locations of the exploration and below the termination of the borings or pits. Therefore, a report based on test borings, test pits, or other exploration method cannot ascertain the nature of the subsurface conditions between and beyond the specific sample locations. If conditions different than are indicated in our report come to your attention after you receive the report, it is recommended that you contact SCI immediately to inform SCI completely of what you have discovered and to authorize further evaluation, if appropriate.
- e. Any recommendations provided in any correspondence, reports, plans, etc. from SCI are for the exclusive use of our client and are specific to the project covered by this contract. Recommendations provided by SCI are not meant to supersede more stringent requirements of local ordinances.
- f. You may not assign this agreement to any other person or entity without the prior written consent of SCI. Any transfer of fifty percent or more of your equity interest or voting interest shall be deemed to be an assignment for this purpose.

## Important Information about This

# Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

## Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. Avoid the problems that can stem from such assumptions by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unitateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. Manage your risk. Get involved.

### **Expect the Unexpected**

The nature of geotechnical engineering is such that planning needs to anticipate the unexpected. During the design phase of a project, more or deeper borings may be required, additional lests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did

whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted
them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper
authorization, or failed to submit notice in a timely manner, or failed to
provide proper documentation. What are your preferences? Who is permitted to authorize additional geotechnical services on your project?
What type of documentation do you require? To whom should it be
sent? When? How? By addressing these and similar issues sooner
rather than later, you and your geotechnical engineer will be prepared for
the unexpected, to help prevent molehills from growing into mountains.

## Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are not final, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geolechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. An offer to provide construction observation is an offer to better manage your risk. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy. The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not

have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

## Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations. Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. Do not rely on an environmental report prepared for someone else.

## Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project is not a mold prevention consultant; none of the services being offered have been designed or proposed for the purpose of mold prevention.

#### Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by hav-

ing your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

#### **Read Responsibility Provisions Closely**

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. Read this proposal's provisions closely. Ask questions. Your geotechnical engineer should respond fully and frankly.

#### Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with an ASFE member geotechnical engineer for more information. Confirm a firm's membership in ASFE by contacting ASFE directly or at its website.



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### **EXHIBIT "C"**

### **WORK SCHEDULE**

•	Notice to Proceed (NTP)	August 2023
•	Project Start-Up	August 2023
•	Project Coordination & Meetings	On Going
•	Topographic Survey	October 06, 2023
•	Geotechnical Investigation	October 06, 2023
•	30% Drawing Submittal	October 27, 2023
•	60% Drawing Submittal	January 26, 2024
•	Submittal to WCID	February 16, 2024
•	90% Drawings Submittal	April 05, 2024
•	100% Drawing Submittal	April 26, 2024
•	Approved Drawings by CORR/WCID	May 10, 2024
•	Bidding	May 13, 2024
•	Award of Contract By City Council	June 13, 2024
•	Execution of Construction Contracts	July 01, 2024
•	Precon	July 15, 2024
•	Begin Construction	August 01, 2024
•	End Construction	August 01, 2025

# EXHIBIT "D" FEE SCHEDULE

(BEHIND THIS PAGE)

Task Description	PM	PE	EA	SCT	ECT	ADM
D.1 - Project Start-up	12	24	0	0	0	0
D.2 - Project Coord & Mtgs	128	64	0	0	0	0
D.3 - Schematic Design (SD-30%)	36	116	0	0	0	0
D.4 - Design Development (DD - 60%)	42	100	0	0	0	0
D.5 - Construciton Documents (CD - 90% & 100%	130	398	0	0	0	0
D.6 - Permit Processing	9	36	0	0	0	0
D.7 - WCID Encroachment Permit	20	120	0	0	0	0
D.8 - SWPPP	3	14	0	0	0	0
D.9 - Bidding	38	62	0	0	0	0
D.10 - Construction Phase	109	47	0	0	0	0
Total Hours	527	981	0	0	0	0
Salary Rate	\$77.00	\$45.00	\$35.00	\$25.00	\$18.00	\$25.00
Direct Labor Cost	\$40,579.00	\$44,145.00	\$0.00	\$0.00	\$0.00	\$0.00

#### **Engineering Services Fee:**

Task	Direct Labor	Overhead 1.57	Tot lab+OH	Fixed Fee 12%	Total Cost					
D.1 - Project Start-up	\$2,004.00	\$3,146.28	\$5,150.28	\$618.03	\$5,768.31					
D.2 - Project Coord & Mtgs	\$12,736.00	\$19,995.52	\$32,731.52	\$3,927.78	\$36,659.30					
D.3 - Schematic Design (SD-30%)	\$7,992.00	\$12,547.44	\$20,539.44	\$2,464.73	\$23,004.17					
D.4 - Design Development (DD - 60%)	\$7,734.00	\$12,142.38	\$19,876.38	\$2,385.17	\$22,261.55					
D.5 - Construciton Documents (CD - 90% & 100%	\$27,920.00	\$43,834.40	\$71,754.40	\$8,610.53	\$80,364.93					
D.6 - Permit Processing	\$2,313.00	\$3,631.41	\$5,944.41	\$713.33	\$6,657.74					
D.7 - WCID Encroachment Permit	\$6,940.00	\$10,895.80	\$17,835.80	\$2,140.30	\$19,976.10					
D.8 - SWPPP	\$861.00	\$1,351.77	\$2,212.77	\$265.53	\$2,478.30					
D.9 - Bidding	\$5,716.00	\$8,974.12	\$14,690.12	\$1,762.81	\$16,452.93					
D.10 - Construction Phase	\$10,508.00	\$16,497.56	\$27,005.56	\$3,240.67	\$30,246.23					
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D.11 - Sub Consultant - Topographic Survey - Diar	nond Surveying	)			\$22,780.00					
D.12 - Sub Consultant - Archetectural Services - M	ode Design Gro	oup			\$211,500.00					
D.13 - Sub Consultant - Landscape Archetectural S	Services - Ecola	nd Design Grou	р		\$52,500.00					
D.14 - Sub Consultant - Geotechnical Services - S	CI Engineering	•	-		\$11,800.00					

Reimbursable Expenses:

Copying and Reproduction

\$1,500.00

# EXHIBIT "E" CERTIFICATES OF INSURANCE

(BEHIND THIS PAGE)



#### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must be endorsed. If SUBROGATION IS WAIVED, subject to

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DED   X RETENTION \$ 10,000   S   WORKERS COMPRENSATION   N   N   N   N   N   PROPRIET COMPARTINEMEDER EXCLUDED?   N   N   N   PROPRIET COMPARTINEMEDER EXCLUDED?   N   N   N   N   N   N   N   PROPRIET COMPARTINEMED   N   N   N   N   N   N   N   N   N		X	W111	-	X occi	JR			658BATH0277		6/9/2023	6/9/2024	EACH OCCURRENCE	\$	2,000,0
WORNERS COMPENSATION AND EMPLOYERS LABILITY ANY PROPER COMPARTINEDEXECUTIVE OFFICE PROPERTY OF OFFICE OFFIC	A	H			CLAIN	IS-MADE	-						AGGREGATE	\$	2,000,0
Antonio Prete, Excluded  Antonio Prete, Excluded  EL EACH ACCIDENT \$ 1,000,00  EL DISEASE - EA EMPLOYEE \$ 1,000,00  EL DISEASE - EA EMPLOYEE \$ 1,000,00  EL DISEASE - POLICY LIMIT \$ 1,000,00  \$ 2,000,000 A  DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  Project Name: "Old Settlers Park - Lakeview Area"  CERTIFICATE HOLDER  CANCELLATION  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE	<u> </u>	IANOS	DED   INLIE		N \$	10,000	₩						I DED   I OTH	\$	
ANYPROPRIETOR/PARTINER/RESCUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below  C Professional Liability/E6O  DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 191, Additional Remarks Schedule, may be attached if more space is required)  Project Name: "Old Settlers Park - Lakeview Area"  CERTIFICATE HOLDER  City of Round Rock 221 E Main St Round Rock, TX 78664  AUTHORIZED REPRESENTATIVE    L. DISEASE - POLICY LIMIT \$ 1,000,00		AND	EMPLOYERS' LIAB	LITY		Y/N		65WBCA14102			6/9/2023	6/9/2024	X STATUTE ER		
Mandatory in NH    Hyss, describe under     DESCRIPTION OF OPERATIONS below	l _	OFFI	CER/MEMBER EXCL				N/A		Antonio Prete, Excluded				E.L. EACH ACCIDENT	\$	1,000,0
DESCRIPTION OF OPERATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  CERTIFICATE HOLDER  City of Round Rock 221 E Main St Round Rock, TX 78664  DESCRIPTION OF OPERATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  CANCELLATION  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE	В	(Man	idatory in NH)			_	1						E.L. DISEASE - EA EMPLOYEE	\$	1,000,0
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