# PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019 by and between the City of Cleburne, Texas (CITY), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (CONSULTANT).

**WHEREAS,** the City contemplates the need to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Project).

**WHEREAS**, CONSULTANT is qualified, able, and desirous of performing the necessary work upon which the Project is based and is willing and able to work with CITY staff to organize and coordinate the professional services necessary to complete the Project.

**NOW, THEREFORE,** CITY engages CONSULTANT to perform, and CONSULTANT agrees to perform, the consulting work for the Project, as more fully described herein below, and CITY agrees to pay as compensation, and CONSULTANT agrees to accept as compensation, the payments on the dates and in the amounts specified in this Agreement, all in accordance with the terms more fully set out below and as provided in Attachment A which is attached hereto and incorporated by reference as if fully set forth below.

## PROFESSIONAL SERVICES

### A. Scope of Work

CONSULTANT will provide the supervision, direction, personnel and equipment to perform the consulting services outlined in Attachment A in accordance with the terms set forth in this Agreement and in the scope of Attachment A.

### B. Definitions

Services refer to the professional services performed by CONSULTANT pursuant to this Agreement.

### C. Changes

CITY, without invalidating the Agreement, may order changes within the general scope of the work required by the Agreement by altering, adding to or deducting from the work to be performed. If any change causes an increase or decrease in CONSULTANT’s cost of, or the time required for, the performance of any part of the Services under the Agreement, an equitable adjustment will be made by mutual agreement and this Agreement shall be modified in writing accordingly.

### D. Coordination with Owner

The CITY shall make available to CONSULTANT for use in performing Services under this Agreement all existing plans, maps, field notes, statistics, computations and other data in the CITY’s possession relative to existing facilities and to the Project.

### E. Site and Local Conditions

CONSULTANT has the right to examine the site in order to become acquainted with local conditions and accepts conditions at the site unless otherwise noted in writing to the CITY. Any coordination or scheduling of work by CITY shall not relieve CONSULTANT from its responsibilities specified under this Agreement. Necessary arrangement for access to any site by CONSULTANT’s employees will be made with CITY.

### F. Assignment and Subcontractors/Third Party Rights

The rights and obligations covered in this Agreement are personal to each party and not to any third party and for this reason neither this Agreement nor any contract hereunder shall be assigned by either party in whole or in part; nor shall CONSULTANT subcontract any of its obligations under this Agreement without the prior written consent of CITY. Nothing in this section shall be construed to prohibit CONSULTANT from supplementing its work force with individual, independent contractors who work for CONSULTANT as CONSULTANT's agents, on an occasional basis, as needed from time to time, under the supervision and control of CONSULTANT, provided that CONSULTANT does not attempt to avoid or assign responsibility for any of CONSULTANT’s duties under this Agreement. The occasional use of such individual, independent contractors by CONSULTANT shall not require CITY's prior approval.

### G. Independent Contractor

CONSULTANT covenants and agrees that it will perform the work under this Agreement as an independent contractor, and not as an officer, agent, servant, or employee of CITY; that CONSULTANT shall have exclusive control of and exclusive right to control the details of the work performed, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of *respondent superior* shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

### H. Disclosure

By signing this contract, CONSULTANT warrants to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relations with abutting property owners. CONSULTANT further warrants that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this contract and prior to final payment under the contract. Finally, CONSULTANT warrants that it has submitted to the City a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

### I. Approval by CITY

Approval by CITY of this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of CONSULTANT, its officers, agents, employees, and subcontractors for the accuracy and competency of the Services performed under this Agreement, including but not limited to any consulting documents or reports.

Such approval shall not be deemed to be a waiver or an assumption of such responsibility and liability by CITY for any negligent act, error, or omission in the performance of CONSTULTANT’S professional services or in the conduct or preparation of the assessment report or other documents by CONSULTANT its officers, agents, employees and subcontractors, it being the intent of the parties that approval by CITY signifies the CITY’s approval of only the general design concept of the Improvements to be constructed.

### J. Indemnification

**CONSULTANT SHALL AND DOES HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL DAMAGES, LOSS OR LIABILITY OF ANY KIND WHATSOEVER, BY REASON OF DEATH OR INJURY TO PROPERTY OR PERSON CAUSED BY ANY OMISSION OR NEGLIGENT ACT OF CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, OR OTHER PERSONS FOR WHOM IT IS LEGALLY LIABLE, WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, AND CONSULTANT WILL, AT ITS COST AND EXPENSE, DEFEND, PAY ON BEHALF OF, AND PROTECT CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.**

### K. No Third Party Beneficiary

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity (except the indemnitees identified or described in Part I, Section J., above), notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY and CONSULTANT, or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations they owe to either CITY or CONSULTANT.

**L. Successors and Assigns**

CITY and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Agreement and to the successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither CITY nor CONSULTANT shall assign or transfer its interest in this Agreement without prior written consent of the other.

## CITY’S RESPONSIBILITIES

1. Provide full information as to CITY’s requirements for the Project;
2. Assist CONSULTANT by placing at CONSULTANT’s disposal all information in CITY’s control or knowledge which is pertinent to the Project;

1. Examine all work presented by CONSULTANT and respond within reasonable time and in writing to the material submitted by CONSULTANT;
2. Give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any defect in CONSULTANT’s work;
3. Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the CITY’s decisions;
4. Provide all information and criteria as to the CITY’s requirements, objectives, and expectations for the Project including all numerical criteria that are to be met and all standards of development, design, or construction;
5. Provide to the CONSULTANT all previous studies, plans, or other documents pertaining to the Project and all new data reasonably necessary in the CONSULTANT’s opinion, upon which the CONSULTANT may rely; and
6. Arrange for access to the site and other private or public property as required for the CONSULTANT to provide its services.

## COMPENSATION FOR PROFESSIONAL SERVICES

The CITY shall compensate CONSULTANT for services rendered under this Agreement, in accordance with the following:

For the completion of the work contemplated in Part I, the CONSULTANT shall be paid on a monthly basis for services rendered, provided that the total paid to CONSULTANT for all services under this Agreement shall not to exceed $\_\_\_\_\_\_.00 for a tasks related to Project, as outlined in the proposal attached hereto as Attachment A. Final payment will be made upon the delivery of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## TIMES OF BILLING AND PAYMENT

The CONSULTANT shall bill CITY monthly for any services incurred in accordance with the work performed, subject to the limits set out in Part III. Payment shall be due upon receipt by CITY of a properly prepared and correct invoice from CONSULTANT. CONSULTANT’s invoices shall be accompanied by such records or other written proof as CITY deems necessary to verify the billings. Invoices shall be mailed to the **City Finance Department office at 10 North Robinson or P.O. Box 677, Cleburne, Texas 76033.**

If CITY fails to make payment due CONSULTANT within thirty (30) days of the day when payment for services and expenses is due under the terms of this Agreement, CONSULTANT shall be entitled to interest on such unpaid sums at the rate provided in Chapter 2251 of the Texas Government Code.

## STANDARD OF CARE

In performing its professional services, the CONSULTANT will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided, and in accordance with any applicable governmental laws, regulations and ordinances.

## PERIOD OF SERVICE

This Agreement shall be effective upon execution by CITY and CONSULTANT and shall remain in force until work is completed on the Project or until terminated under the provisions in Part VII.

## TERMINATION

The CITY may terminate this Agreement at any time for convenience, with or without cause by giving written notice to the CONSULTANT. Such termination may be made effective on such future date as agreed by the parties, but absent such agreement shall be immediate. Upon receipt of such notice the CONSULTANT shall immediately discontinue all services and work and the placing of all orders or the entering into contracts for supplies, assistance, facilities, and materials in connection with the performance of this Agreement and shall proceed to cancel promptly all existing contracts insofar as they are chargeable to this Agreement.

The CONSULTANT, upon termination, shall be paid for all services rendered through the date of termination together with any additional reimbursable expense then due.

## OWNERSHIP OF DOCUMENTS

1. All completed or partially completed reports prepared under this Agreement, including the original drawings in both paper and electronic formats, shall become the property of CITY if this Agreement is terminated. Upon completion and payment of the contract, the final design, drawings, specifications and documents in both paper and electronic formats shall be owned by CITY.
2. Reuse, change or alteration by CITY or others acting by or on behalf of CITY of such documents without the permission of CONSULTANT shall be at CITY’s sole risk.

## INSURANCE

CONSULTANT shall carry and maintain at all times relevant to this Agreement, at CONSULTANT’s expense, insurance of the type and of minimum coverage limits as follows:

1. Workers Compensation - Statutory Employer’s Liability - Limits as required by the State of Texas or Waiver of Liability Form.

2. Comprehensive General Liability, Bodily Injury and Property Damage including contractual liability in a combined single limit - $500,000 per occurrence.

Certificates of insurance for the above coverage in a form acceptable to CITY, evidencing the coverage required above, shall be provided to CITY within ten (10) business days after execution of this Agreement and prior to issuing Notice to Proceed. Such certificates shall provide that the insurer will give CITY not less than ten (10) days’ notice of any material changes in or cancellation of coverage. In the event any subcontractor of CONSULTANT, with or without CITY’s consent, provides or renders services under this Agreement, CONSULTANT shall ensure that the subcontractor’s services are covered by the same insurance limits as set forth above.

CONSULTANT shall not commence work under this Agreement until it has obtained Professional Liability (Errors and Omissions) Insurance as required hereunder and such insurance coverage has been approved by CITY. Such insurance shall be in the minimum amount of $1,000,000 and shall include coverage of Contractually Assumed Liability. The insurance coverage prescribed herein shall be maintained until one (1) year after CITY’s acceptance of the project and shall not be canceled without prior written notice to CITY. In this connection, upon the signing and return of this Agreement by CONSULTANT, a Certificate of Insurance shall be furnished to CITY as evidence that the insurance coverage required herein has been obtained by CONSULTANT. Such insurance shall not be cancelled or modified by CONSULTANT without thirty (30) days prior written notice to CITY. CONSULTANT shall notify CITY within ten (10) days of any other modification or alteration in such Professional Liability (Errors and Omissions) Insurance.

## AUTHORIZATION, PROGRESS AND COMPLETION

CITY and CONSULTANT agree that the Project is planned to be completed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_. CONSULTANT shall employ manpower and other resources and use professional skill and diligence to meet the schedule; however, CONSULTANT shall not be responsible for schedule delays resulting from conditions beyond its control. By mutual agreement, CITY and CONSULTANT may modify the Project schedule during the course of the Project and if such modifications affect CONSULTANT’s compensation, it shall be modified accordingly, subject to CITY’s approval.

It is understood that this Agreement contemplates full and complete services for this Project, including any and all Services necessary to complete the work. For additional Consulting Services, the authorization by CITY shall be in writing and shall include the definition of the services to be provided, the schedule for commencing and completing the services, and the basis for compensation as agreed upon by CITY and CONSULTANT.

## NOTICE

Any notice required under this Agreement will be in writing and given either personally, by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service, addressed to the parties as follows:

If to CITY: Steve Polasek

City Manager

City of Cleburne

P.O. Box 677

10 North Robinson

Cleburne, Texas 76033

Phone: (817) 645-0900

Facsimile: (817) 645-0903

If to CONSULTANT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

All notices shall be effective upon the date of receipt.

## SEVERABILITY

If any provision of this Agreement shall be found to be void or unenforceable, such finding shall not be construed to render any other provisions of this Agreement either void or unenforceable. All provisions, which are void or unenforceable, shall not substantially affect the rights or obligations granted to or undertaken by either party.

## VENUE, IMMUNITY, ATTORNEY’S FEES

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought hereunder shall be a court of competent jurisdiction in Johnson County, Texas.

2. It is expressly understood and agreed that the execution of this Agreement shall in no way be construed or deemed a waiver of immunity or defense that would otherwise be available to CITY against claims arising in the exercise of governmental powers and functions.

3. In the event it should become necessary for either party to take legal action to interpret or enforce the terms, or sue for breach of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable attorney’s fees and costs of court.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed in two equal originals on the date and year first above mentioned.

CITY OF CLEBURNE:

By: Date:

Steve Polasek, City Manager

ATTEST:

By: Date:

Shelly Doty, City Secretary

CONSULTANT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THE STATE OF TEXAS §**

**COUNTY OF \_\_\_\_\_\_\_\_\_ §**

Before me on this day personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_known to me [or proved to me on the oath of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and that he/she is the duly authorized \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2019.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(SEAL) Notary Public, State of Texas

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary’s Name Printed