



May 8, 2024

Chad Bartee, P.E.
City Engineer
City of Keller
1100 Bear Creek Parkway
Keller, Tx 76244
Office: 817-743-4082
Email: cbartee@cityofkeller.com

RE: Engineering Drainage Review

Mr. Bartee:

We are pleased to submit an amendment to our scope of work and fee proposal to assist the City of Keller with drainage review services. As you know, we were initially contracted for hourly services not to exceed \$30,000 to assist with drainage reviews. Over the course of the last six months, we have exceeded the \$30,000 maximum. Based on a linear interpolation this amendment proposes to extend the contract amount \$48,415 to meet the needs of the City through the end of the fiscal year.

The proposed augmented review shall be provided as specifically requested, on an hourly basis, and on a project-by-project basis. Direct expenses (i.e. reproduction, courier, travel, etc.) will also be charged in accordance with the enclosed General Conditions.

The renewed professional services contract executed in September 2023 provides for a not-to-exceed amount of \$30,000. Today, we are requesting a fee amendment to this project:

Professional Services Agreement	Amendment Amount	Contract Amount Total
Original Contract Amount		\$ 30,000.00
Amendment No. 1 to Contract	\$ 48,415.00	\$ 78,415.00

Keller Drainage Review

5/8/2024

Page 2 of 8

We hope you find the above and enclosed information complete; and encourage you to call with any questions or comments.

We appreciate the opportunity to submit this request for contact amendment and look forward to working with you.

Thank you,

Sincerely,

BAIRD, HAMPTON & BROWN, INC.



Skylar Wierzbicki, PE
Associate, Civil Engineer

CLIENT

Signature

Name

Date

Attachment: General Conditions

GENERAL CONDITIONS

THE GENERAL CONDITIONS HEREIN ARE MADE A PART OF THE AGREEMENT BETWEEN BAIRD, HAMPTON & BROWN, INC., HEREIN AFTER REFERRED TO AS “BHB” AND **CITY OF KELLER**, HEREIN AFTER REFERRED TO AS “THE CLIENT”.

Services under this agreement will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of this profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended.

Baird, Hampton & Brown, Inc. shall not be responsible for Contractor’s failure to construct the work in accordance with the Contract Documents.

COMPENSATION

Compensation to BHB for the basic services shall be as described in the agreement. If BHB sees the Scope of Services Changing so that additional services are needed, BHB will notify the client for approval before proceeding. Additional Services shall be computed based on the BHB hourly rate schedule as shown below:

Engineering – Eng.; Land Surveying – LS; Landscape Architecture – LA

Eng. & Management – Principal/VP	\$ 300.00 /hr.	Designer - IV	\$ 205.00 /hr.
Eng. PE/LS RPLS/LA RLA - IV	\$ 210.00 /hr.	Designer - III	\$ 140.00 /hr.
Eng. PE/LS RPLS/LA RLA - III	\$ 180.00 /hr.	Designer - II	\$ 120.00 /hr.
Eng. PE/LS RPLS/LA RLA - II	\$ 160.00 /hr.	Designer - I	\$ 100.00 /hr.
Eng. PE/LS RPLS/LA RLA - I	\$ 140.00 /hr.	CAD/Tech. Survey Services	\$ 95.00 /hr.
Eng. EIT/LS SIT - IV	\$ 130.00 /hr.	Field Surveying – 1 Person Crew	\$ 175.00 /hr.
Eng. EIT/LS SIT - III	\$ 120.00 /hr.	Field Surveying – 2 Person Crew	\$ 205.00 /hr.
Eng. EIT/LS SIT - II	\$ 110.00 /hr.	Field Surveying – 3 Person Crew	\$ 225.00 /hr.
Eng. EIT/LS SIT - I	\$ 100.00 /hr.	Construction Staking – 2 Person Crew	\$ 225.00 /hr.
LA - Intern	\$ 95.00 /hr.	Clerical Services	\$ 70.00 /hr.
CAD / Drafting Services	\$ 70.00 /hr.		

The hourly rate schedule will be adjusted annually.

Baird, Hampton & Brown, Inc. reserves the right to determine the project team arrangement and / or crew size and equipment usage for each project, allowing us to utilize our experience to maximize project efficiency and production.

The standard workday includes travel time to and from Baird, Hampton & Brown, Inc.’s office. Variation in work time, to include weekends, holidays or overtime must be agreed to in writing before working. A minimum of two (2) hours of survey crew time will be billed for each scheduled site visit. We require two (2) working days notice when scheduling additional work.

DIRECT EXPENSES - Direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include any review or permit fees paid by BHB, outside printing and reproduction expenses, travel, transportation, and subsistence away from the DFW metroplex and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, tests, and other work to be done by independent persons other than staff members. Travel will be reimbursed at \$0.675 per mile or the current reimbursement rate allowed by the IRS at the time of this agreement.

OPINIONS OF PROBABLE CONSTRUCTION COST - In providing opinions of probable construction cost, the Client understands that BHB has no control over the cost or availability of labor, equipment, or materials, or over market conditions or the Contractor's method of pricing, and that BHB's opinions of probable construction costs are made on the basis of BHB's professional judgment and experience. BHB makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from BHB's opinion of probable construction cost.

VERIFICATION OF EXISTING CONDITIONS - Inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by BHB regarding existing conditions, and because some of these assumptions may not be verifiable without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Client agrees to bear all costs, losses and expenses, including the cost of the Consultant's Additional Services, arising from the discovery of concealed or unknown conditions in the existing structure.

DURATION OF AGREEMENT - This proposal assumes that the total duration of the project, including design, construction, commissioning and certificate of occupation will not exceed 24 months. If this project continues longer than 24 months and BHB is required to provide engineering services, then services will be payable as additional services.

PAYMENT DUE. Invoices will be submitted based upon the work performed during the billing period and are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.

INTEREST. If payment in full is not received by BHB within 90 calendar days of the due date, invoices shall bear interest at one percent of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

COLLECTION COSTS. If the Client fails to make payments when due and BHB incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to BHB. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable BHB staff costs at standard billing rates for BHB's time spent in efforts to collect. This obligation of the Client to pay BHB's collection costs shall survive the term of this Agreement or any earlier termination by either party.

SUSPENSION OF SERVICES. If the Client fails to make payments when due or otherwise is in breach of this Agreement, BHB may suspend performance of services upon seven calendar days' notice to the Client. BHB shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, BHB may choose to resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance.

TERMINATION OF SERVICES. If the Client fails to make payment to BHB in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by BHB.

SET-OFFS, BACKCHARGES, DISCOUNTS. Payment of invoices shall not be subject to any discounts or set-offs by the Client unless agreed to in writing by BHB. Payment to the Consultant for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

PERMITS AND APPROVALS - BHB shall assist the Client in applying for those permits and approvals required by law for projects similar to the one for which BHB's services are being engaged. This assistance shall consist of completing

and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents and other services normally provided by BHB and included in the Scope of Services of this Agreement. This assistance does not include, however, special studies, special research, attendance at more than ____ meetings with public authorities, special testing or special documentation not usually and customarily required for this type of project. BHB will provide such special services as Additional Services as authorized in writing by the Client in accordance with the compensation provisions of this Agreement.

AMERICANS WITH DISABILITIES ACT – TEXAS DEPARTMENT OF LICENSING AND REGULATION – ARCHITECTURAL BARRIERS – Unless specifically included within BHB’s proposed scope of work, the project Architect, Client and/or Owner are responsible for the timely project registration, and submittal of the issued/sealed “for construction” engineering plans prepared by BHB and/or its sub-consultants, per Government Code, Chapter 469, Subchapter C, Section 469.101 & 469.012.

INFORMATION PROVIDED BY OTHERS - The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. BHB may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. BHB shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client’s consultants and contractors.

DEFINITION OF HAZARDOUS MATERIALS - As used in this Agreement, the term *hazardous materials* shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

HAZARDOUS MATERIALS – SUSPENSION OF SERVICES - Both parties acknowledge that BHB's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event BHB or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to BHB that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of BHB's services, BHB may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

HAZARDOUS MATERIALS INDEMNITY - The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless BHB, its officers, partners and employees from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of BHB.

JOBSITE SAFETY - Neither the professional activities of BHB, nor the presence of BHB or its employees and subconsultants at a construction/project site, shall impose any duty on BHB, nor relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. BHB and its personnel have no authority to exercise any control over any construction contractor or its employees in connection

with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the General Contractor shall defend and indemnify the Client, BHB and BHB's subconsultants.

CONSTRUCTION OBSERVATION - BHB will visit the site at intervals stated within this Agreement, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow BHB to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, BHB shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by BHB as Additional Services in accordance with the terms of this Agreement.

BHB shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

BHB shall not be responsible for any acts or omissions of the Contractor, any subcontractor, any entity performing any portions of the Work or any agents or employees of any of them. BHB does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

SHOP DRAWING REVIEW - BHB shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. BHB's review shall be conducted with reasonable promptness while allowing sufficient time in BHB's judgment to permit adequate review. Review of a specific item shall not indicate that BHB has reviewed the entire assembly of which the item is a component. BHB shall not be responsible for any deviations from the Construction Documents not brought to the attention of BHB in writing by the Contractor. BHB shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

CERTIFICATIONS, GUARANTEES AND WARRANTIES - BHB shall not be required to sign any documents, no matter by whom requested, that would result in BHB's having to certify, guarantee or warrant the existence of conditions whose existence BHB cannot ascertain. The Client also agrees not to make resolution of any dispute with BHB or payment of any amount due to BHB in any way contingent upon BHB's signing any such certification.

OWNERSHIP OF INSTRUMENTS OF SERVICE - All reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by BHB as instruments of service shall remain the property of BHB. BHB shall retain all common law, statutory and other reserved rights, including, without limitation, the copyrights thereto.

If provided, accepting and utilizing any electronic CAD drawings, reports and data on any form of electronic media generated and furnished by BHB, shall demonstrate agreement by client that all such electronic files are instruments of service of BHB, who shall be deemed author, and who shall retain all common law and other rights, including

copyrights. Said files would be transmitted without warranty as to their accuracy or suitability for the purpose to which the recipient intends to use them.

Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The client agrees not to transfer these electronic files to others without the prior written consent of BHB.

In addition, the client agrees, to the fullest extent permitted by law, to indemnify and hold harmless BHB, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from any use of the electronic files.

RECORD DOCUMENTS - Under the basic scope of this work, BHB shall not provide Record Documents for this project based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor or other third parties. These Record Documents may be provided as an added scope to this project at the hourly rates stated herein and may show significant changes made during construction. Because these Record Documents will be based on unverified information provided by other parties, which BHB is entitled to assume will be reliable, BHB cannot and does not warrant their accuracy.

MEDIATION - In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and BHB agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation.

The Client and BHB 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 their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

TERMINATION - In the event of termination of this Agreement by either party, the Client shall within fourteen calendar days of termination pay BHB for all services rendered and all reimbursable costs incurred by BHB up to the date of termination, in accordance with the payment provisions of this Agreement.

The Client may terminate this Agreement for the Client's convenience and without cause upon giving BHB not less than seven calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or BHB's services by the Client for more than ninety calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of BHB, the Client shall pay BHB, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by BHB in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

ASSIGNMENT – Neither party to this agreement shall transfer, sublet, or assign any rights or duties under or interest in this Agreement, including, but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Consultant as a generally accepted business practice shall not be considered an assignment for the purposes of this Agreement.

STATEMENT OF JURISDICTION - The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas. The TBAE may be reached 333 Guadalupe, Suite 2-350, Austin, TX 78701 or PO Box 1237, Austin, TX 78711; Telephone 512-305-9000.

INDEMNIFICATION - BHB agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by BHB's negligent performance of professional services under this Agreement.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless BHB, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor BHB shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others