

October 19, 2021

Mr. Chad Bartee, PE, City Engineer
City of Keller

1100 Bear Creek Parkway
Keller, TX 76244

Tel: 817-743-4082, Email: CBartee@cityofkeller.com

RE: ENGINEERING DEVELOPMENT REVIEW

Mr. Bartee:

We are pleased to submit our scope of work and fee proposal to assist the City of Keller with complete development review services. As you know, we've been providing drainage review services, to supplement city staff reviews; and we understand the city wishes for us to now include a more complete development review to assure compliance with the Uniform Development Code.

This proposed augmented review shall be provided as specifically requested, on an hourly basis, and on a project-by-project basis. We understand that these services are an interim solution, while the City endeavors to fill a recently vacated review engineer position.

At this time, we anticipate assisting primarily with engineering reviews of commercial, site plan, and construction plan submittals; however, other reviews may also be requested – depending upon staff needs. The reviews will include grading/drainage reviews, Uniform Development Code reviews, and constructability reviews.

As discussed, we also anticipate attending a weekly design review meeting, to coordinate, and offer feedback at pre-development conferences. This meeting is currently scheduled for Wednesday morning's, at 9:00am, and lasts approximately two to three hours.

Lastly, we understand there may be a need for limited engineering design services, on small projects, to address an immediate need for improvements, that may be constructed by city forces. Please be assured we remain ready and flexible to assist, as needed.

We propose to provide the above-described services, as requested and on an hourly basis, within the budgeted amount of One Hundred and Fifty Thousand (\$150,000) Dollars. Direct expenses (i.e. reproduction, courier, travel, etc.) will also be charged in accordance with the enclosed General Municipal Conditions.

All work will be performed in accordance with standard industry practices and the enclosed GENERAL MUNICIPAL CONDITIONS, which are an integral part of this Agreement. All services shall be provided on an hourly basis and at our standard billing rates listed in the General Conditions.

This agreement is anticipated to extend for a period of no more than one year, at which point the contract may be renewed, and rates may be renegotiated, as may be appropriate.

As with other similar assignments, we request ten business days to respond to each request for review.

Please be informed that occasionally we/Baird, Hampton & Brown may assist a private entity with a development project within the City of Keller. Should that occur, and to address a perceived/potential conflict of interest, we shall inform city staff immediately, and recommend City of Keller staff, or another consultant, perform the review of such projects.

If the scope of services and fee structure meets with your approval, then please sign below, signifying your acceptance, and return a copy for our files. We will consider receipt of this signed agreement as our notice to proceed.

We appreciate the opportunity to submit this proposal and look forward to working with you.

Thank you:

BAIRD, HAMPTON & BROWN



Konstantine Bakintas, PE
Principal, Sr. Civil Engineer

Enclosure: General Municipal Conditions to Agreement

CC: Alonzo Linan, PE, Director of Public Works – City of Keller
 Kevin Miller, PE, Sr. Associate – Baird, Hampton & Brown

ACCEPTED: **CITY OF KELLER**

Printed Name of Authorized Representative:

Date:

Signature of Authorized Representative:

THE GENERAL CONDITIONS HEREIN ARE MADE A PART OF THE AGREEMENT BETWEEN BAIRD, HAMPTON & BROWN, INC., HEREIN AFTER REFERRED TO AS "BHB" AND THE CITY OF KELLER, OR ITS DESIGNATED REPRESENTATIVE, HEREIN AFTER REFERRED TO AS "THE CLIENT".

Services under this agreement/contract 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.

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 & LANDSCAPE ARCHITECTURE			LAND SURVEYING SERVICES		
Engineering & Management, Principal/VP	\$ 250.00	/hr	Surveying & Management, Principal/VP	\$ 250.00	/hr
Project Management	\$ 170.00	/hr	Surveying Services, Senior RPLS	\$ 170.00	/hr
Engineering Services, Senior PE	\$ 170.00	/hr	Surveying Services, RPLS	\$ 145.00	/hr
Engineering Services - PE	\$ 120.00	/hr	Surveying Services, Senior Tech.	\$ 120.00	/hr
Engineering Services - EIT	\$ 95.00	/hr	CAD/Technical Survey Services	\$ 90.00	/hr
Design Services, Senior Designer	\$ 120.00	/hr	Land Surveying Research	\$ 90.00	/hr
Design Services by Designer	\$ 90.00	/hr	Field Surveying - 1 Person Crew	\$ 145.00	/hr
CAD/Drafting Services	\$ 70.00	/hr	Field Surveying - 2 Person Crew	\$ 175.00	/hr
Landscape Architectural Services - LA	\$ 120.00	/hr	Field Surveying - 3 Person Crew	\$ 195.00	/hr
Landscape Architect Intern	\$ 85.00	/hr	Construction Staking - 2 Person	\$ 195.00	/hr
Clerical Services	\$ 60.00	/hr	GIS Technical Services	\$ 75.00	/hr

The hourly rate schedule may be adjusted annually.

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

The standard survey field crew 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 field survey 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 \$0.575 per mile or the current reimbursement rate allowed by the IRS at the time of this agreement.

ESTIMATES / 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 estimates/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 estimate of probable construction cost.

VERIFICATION OF EXISTING CONDITIONS - Inasmuch as the rehabilitation of the existing structure/improvements 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/improvements.

DURATION OF AGREEMENT - This proposal assumes that the total duration of the project, including design and construction will not exceed 12 months. If this project continues longer than 12 months and BHB is required to provide engineering services, then it may become necessary to modify this agreement for 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.

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.

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.

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, the Client/Recipient agrees that all such electronic files are instruments of service of BHB, who shall be deemed author, and shall retain all common law and other rights, including copyrights. Said files are transmitted without warranty as to their accuracy or suitability for the purpose to which the recipient intends to use them.

The Client/Recipient agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Recipient agrees not to transfer these electronic files to others without the prior written consent of BHB. The Recipient further agrees to waive all claims against BHB resulting in any way from unauthorized changes to or reuse of the electronic files for any other project by anyone other than BHB.

Client/Recipient is aware that differences may exist between the electronic files and printed hard-copy documents. In the event of a conflict between signed documents prepared by BHB and the electronic files, the signed or sealed hard-copy documents shall govern.

In addition, the Client/Recipient 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.

Under no circumstances shall delivery of electronic files for use by the Recipient be deemed a sale by BHB, and BHB makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall BHB be liable for indirect consequential damages as a result of the Recipient's use or reuse of the electronic files.

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, and in no case more than fourteen calendar days of receipt of final invoice, 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.

TBAE 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.

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.