

RESOLUTION NO. R-3098

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, SELECTING BURDITT CONSULTANTS, LLC IN RESPONSE TO RFQ NO. 2021-09Q FOR THE PROVISION OF PROFESSIONAL ARCHITECTURAL SERVICES RELATED TO THE ARCHITECTURAL AND ENGINEERING DESIGN OF A NATURE CENTER AT SEABOURNE CREEK PARK IN THE AMOUNT OF \$350,000; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, APPROPRIATE DOCUMENTS AND/OR AGREEMENTS NECESSARY TO FACILITATE SAID SERVICES.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. Burditt Consultants, LLC is hereby selected in response to RFQ No. 2021-09Q for the provision of Professional Architectural Services related to the architectural and engineering design of a Nature Center at Seabourne Creek Park in the amount of \$350,000.

Section 2. The City Manager is hereby authorized to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements necessary to facilitate said services.

Section 3. A copy of said Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 15 day of June 2021.

ATTEST:

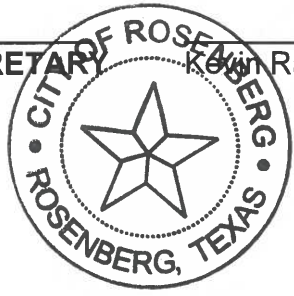
APPROVED:

Danyel Swint

K-R

Danyel Swint, TRMC, CITY SECRETARY

Kew Raines, MAYOR



**AGREEMENT FOR
ARCHITECTURAL DESIGN SERVICES**

SEABOURNE CREEK PARK NATURE CENTER

STATE OF TEXAS §

COUNTY OF FORT BEND §

THIS AGREEMENT, entered into and executed by and between the CITY OF ROSENBERG, a home rule municipality under the laws of the State of Texas, hereinafter called "CITY", and BURDITT CONSULTANTS, LLC, hereinafter called "ARCHITECT".

WHEREAS, the ARCHITECT represents that it is fully capable of making and qualified to provide assistance to the CITY and ARCHITECT desires to perform the same;

NOW, THEREFORE, the CITY and the ARCHITECT, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION 1
SCOPE OF AGREEMENT**

The ARCHITECT agrees to provide the services as defined in Attachment "A" and any Amendments attached hereto and made a part hereof, and for having provided said services, the CITY agrees to pay the ARCHITECT compensation as stated in the sections to follow. This Agreement takes precedence over all attachments in the event of conflicting terms and conditions.

**SECTION 2
CHARACTER AND EXTENT OF WORK**

The ARCHITECT shall provide the services as defined in Attachment "A" and any Amendments attached hereto. The CITY shall be under no obligation to pay for services rendered without prior authorization.

**SECTION 3
TIME FOR PERFORMANCE**

The work shall be performed in accordance with Architect's proposal as Attachment "A". Upon written request of the ARCHITECT, the CITY may grant time extensions to the extent of any delays caused by the CITY or other agencies with which the work must be coordinated and over which the ARCHITECT has no control.

**SECTION 4
COMPLIANCE AND STANDARDS**

ARCHITECT agrees to provide services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the ARCHITECT's trade or profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the

performance of the Agreement, including, without limitation, worker's compensations laws, minimum and maximum salary and wage statutes and regulations and licensing laws and regulations. When required, the ARCHITECT shall furnish the CITY with satisfactory proof of compliance.

SECTION 5 CHANGES TO THE PROJECT; ADDITIONAL WORK

ARCHITECT shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the CITY finds it necessary to make changes to previously satisfactorily completed work or parts thereof that have been approved by the CITY in writing, the ARCHITECT shall make such revisions if requested and as directed by the CITY and such services will be considered as additional work and paid for as specified under following paragraph.

The CITY retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and not does not otherwise constitute special services under this Agreement must be approved in writing by the CITY by supplemental agreement before the additional work is undertaken by the ARCHITECT. If the ARCHITECT is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the ARCHITECT shall promptly notify the CITY of that opinion, in writing. If the CITY agrees that such work does constitute additional work, then the City and the ARCHITECT shall execute a supplemental agreement for the additional work and the CITY shall compensate the ARCHITECT for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement

SECTION 6 INDEMNIFICATION

ARCHITECT shall and does hereby agree to indemnify and hold harmless the CITY, and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities, from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by ARCHITECT – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904 (a) OF THE TEXAS LOCAL GOVERNMENT CODE.

SECTION 7 FORCE MAJEURE

Force Majeure. Neither ARCHITECT, its suppliers nor CITY will be liable for any failure or delay in this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of ARCHITECT), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If ARCHITECT is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, CITY may cancel the services order without penalty.

SECTION 8
THE ARCHITECT'S COMPENSATION

For and in consideration of the services rendered by the ARCHITECT pursuant to this Agreement, the CITY shall pay the ARCHITECT the amount of \$315,000.00 for "Basic Services" and up to an additional \$35,000.00 for "Additional Services and Reimbursable Expenses" which shall be considered as the total maximum fee in the amount not to exceed \$350,000.00.

The limit of appropriation is addressed in Section 13.

SECTION 9
TIME OF PAYMENT

Payment by the CITY to the ARCHITECT shall be made as follows:

ARCHITECT shall be provided a purchase order number from the CITY and such number shall be referenced on all invoices submitted to the CITY. Upon completion of the work, ARCHITECT shall submit to the City Manager or designee an invoice, in a form acceptable to the CITY, setting forth the charges for the services provided which were delivered during such billing period, and the compensation which is due for same. If the project work shall take in excess of thirty (30) calendar days, then such invoice shall be submitted to the CITY on or about the first of each month. The City Manager shall review the same and approve it with such modifications, as deemed appropriate. The CITY shall pay each invoice as approved by the City Manager within thirty (30) days after receipt of a true and correct invoice by the CITY. The approval or payment of any such invoice shall not be considered to be evidence of performance by the ARCHITECT to the point indicated by such invoice or of the receipt of or acceptance by the CITY of the services covered by such invoice.

Invoices shall be submitted to the following address:

City of Rosenberg
Attn: Program Director of Capital Projects
P.O. Box 32
2110 4th Street
Rosenberg, Texas 77471

Invoices submitted without a purchase order number will be returned unpaid. Failure to submit invoices to the above address will delay payment. DO NOT submit invoices to any other address for payment. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

SECTION 10
TIME OF COMPLETION

The prompt completion of the services under which the Scope of Work relates is critical to the City. Unnecessary delays in providing services under the Scope of Work shall be grounds for dismissal of the ARCHITECT and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by ARCHITECT prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the ARCHITECT shall have completed all tasks and services described in the Scope of Work.

SECTION 11
TERMINATION

This Agreement may be terminated:

- (1) By the mutual agreement and consent of both ARCHITECT and CITY;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the CITY, immediately upon notice in writing to the ARCHITECT, as consequence of the failure of ARCHITECT to perform the services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the CITY, at will and without cause upon not less than thirty (30) days written notice to the ARCHITECT.
- (5) If the CITY terminates this Agreement pursuant to Section 10 above, or subsection 11 (2) or (3), above, the ARCHITECT shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the ARCHITECT considering the actual costs incurred by the ARCHITECT in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another ARCHITECT to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the ARCHITECT, the ARCHITECT shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

SECTION 12
ADDRESS AND NOTICES AND COMMUNICATIONS

The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to the other by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, (iv) by sending the same by telefax with confirming copy sent by mail, or (v) by sending the same by electronic mail with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed by providing written notice in accordance hereunder, shall be as follows:

All notices and communications under this Agreement shall be mailed to the ARCHITECT at the following address:

BURDITT CONSULTANTS, LLC

Attention: Charles Burditt
Title: President
Address: 310 Longmire Rd; Conroe, Texas 77304
Telephone: 936-756-3041
Email: CBurditt@burditt.com

All notices and communications under this Agreement shall be mailed to the CITY at the following address:

City of Rosenberg
Attn: John Maresh, City Manager
P.O. Box 32
2110 4th Street
Rosenberg, Texas 77471
(832) 595-3310
JMaresh@rosenbergtx.gov

SECTION 13 LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, ARCHITECT has been advised by the CITY and ARCHITECT clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the CITY shall have available the amount budgeted for this project to discharge any and all liabilities which may be incurred by the CITY pursuant to this Agreement and that the total maximum compensation that the ARCHITECT may become entitled to hereunder and the total maximum sum that the CITY shall become liable to pay to ARCHITECT hereunder shall not under any conditions, circumstances, or interpretations, hereof, exceed the said total maximum sum provided for in this section without prior written permission from the CITY.

SECTION 14 SUCCESSORS AND ASSIGNS

The CITY and the ARCHITECT bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the CITY nor the ARCHITECT shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in subletting of any work shall not relieve the ARCHITECT of any responsibility for work done by such subcontractor. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

SECTION 15 OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents prepared by the ARCHITECT or furnished to the ARCHITECT by the CITY shall be delivered to and become the property of the CITY. All drawings, charts, calculations, plans, specifications and other data prepared under or pursuant to this Agreement shall be made available, upon request, to the CITY without restriction or limitation on the further use of such materials **PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE ARCHITECT FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE ARCHITECT.** Where applicable, ARCHITECT shall retain all pre-existing proprietary rights in the materials provided to the CITY but shall grant the CITY a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purpose for which the information was provided. The ARCHITECT may, at ARCHITECT's expense, have copies made of the documents or any other data furnished to the CITY under or pursuant to this Agreement.

SECTION 16
ARCHITECT'S SEAL

The ARCHITECT shall place the Texas Professional Architect's seal of endorsement of the principal Architect on all documents and architectural data furnished by the ARCHITECT to the CITY. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the architectural profession. The plans, specifications and architectural data provided by ARCHITECT shall be adequate and sufficient to enable those performing the actual construction of the work to perform the work as and within the time contemplated by the CITY and ARCHITECT. The CITY acknowledges that ARCHITECT has no control over the methods or means of construction nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of construction costs by the ARCHITECT are for informational purposes only and are not guarantees.

SECTION 17
INDEPENDENT CONTRACTOR

ARCHITECT acknowledges that ARCHITECT is an independent contractor of the CITY and is not an employee, agent, official or representative of the CITY. ARCHITECT shall not represent, either expressly or through implication, that ARCHITECT is an employee, agent, official or representative of the CITY. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the ARCHITECT.

SECTION 18
NON-COLLUSION

ARCHITECT represents and warrants that ARCHITECT has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the CITY under this Agreement. ARCHITECT further agrees that ARCHITECT shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the CITY pursuant to this Agreement) for any of the services performed by ARCHITECT under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to ARCHITECT, ARCHITECT shall immediately report that fact to the CITY and, at the sole option of the CITY, the CITY may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to ARCHITECT under or pursuant to this AGREEMENT.

SECTION 19
MEDIA

Contact with the news media shall be the sole responsibility of the CITY. ARCHITECT shall under no circumstances release any material or information developed in the performance of its work hereunder without the express written permission of the CITY.

SECTION 20
AUTHORITY OF CITY MANAGER

All work to be performed by the ARCHITECT hereunder shall be performed to the satisfaction of the City Manager. The City Manager shall decide any and all questions, which may arise as to the quality, or acceptability of the work performed by the ARCHITECT and the decisions of the City Manager in such cases shall be final and binding on both parties. However, nothing contained herein shall be construed to authorize the City Manager to alter, vary or amend this Agreement.

SECTION 21
INSURANCE REQUIREMENTS

A current certificate of insurance with the City named as an additional insured is required to be submitted to the Purchasing Office before the City will enter into a contract with a vendor.

A. POLICY REQUIREMENTS

Prior to the approval of this contract by the CITY, ARCHITECT shall furnish a completed insurance certificate to the Purchasing Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. **CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY**, and no officer or employee of the City shall have authority to waive this requirement.

B. INSURANCE COVERAGE REQUIRED

Worker's Compensation - Statutory and Employers Liability with minimum limits of \$500,000 each accident and \$1,000,000 each employee; Commercial General (public) Liability insurance minimum limits of \$1,000,000 each occurrence including coverage Comprehensive Automobile Combined single limit for liability insurance, including bodily injury and property coverage of \$1,000,000 each accident.

C. ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, ARCHITECT shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

D. REQUIRED PROVISIONS

ARCHITECT agrees with the respect to the above required insurance, all insurance contracts and certificate(s) of insurance *will contain and state, in writing, on the certificate or its attachment, the following required provisions:*

1. Name the City of Rosenberg and its officers, employees, and elected representatives as an additional insured;
2. Provide for notice to City upon cancellation;
3. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Rosenberg where CITY is an additional insured shown on the policy;
4. Provide for notice to the City at the address shown;
5. ARCHITECT agrees to waive subrogation against the City of Rosenberg, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;

E. NOTICES

ARCHITECT shall notify CITY in the event of any change in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following address:

City of Rosenberg
Attn: City Manager
P.O. Box 32
2110 4th Street
Rosenberg, Texas 77471

F. APPROVAL

Approval, disapproval, or failure to act by CITY regarding any insurance supplied by ARCHITECT shall not relieve ARCHITECT of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate ARCHITECT from liability.

SECTION 22 MODIFICATIONS

This instrument, including Attachment "A" and any Amendments attached hereto contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. In the event of any conflict between this instrument and/or Attachment "A", the CITY acting through the City Manager at his sole discretion shall determine which provision prevails. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION 23 FISCAL FUNDING

The CITY's fiscal year is October 1st through September 30th. If this contract extends beyond September 30, 2020, there shall be a fiscal funding out. If, for any reason, funds are not appropriated to continue the contract in the new fiscal year, said contract shall become null and void on the last day of the current appropriation of funds. Contract will then be terminated without penalty of any kind or form to the CITY.

SECTION 24 CHOICE OF LAW

This AGREEMENT and all the transactions contemplated herein shall be governed by the laws of the State of Texas. Exclusive venue for any action arising out this AGREEMENT shall be in Fort Bend County, Texas and ARCHITECT hereby consents to such jurisdiction and venue.

SECTION 25 SEVERABILITY

In the event that any provision(s) of this AGREEMENT shall for any reason be held invalid, illegal, or unenforceable, the invalidity, illegality or unenforceability of that provision(s) shall not affect any other provision(s) of this AGREEMENT, and it shall further be construed as if the invalid, illegal, or unenforceable

provision(s) had never been a part of this AGREEMENT. This document and included Attachments is the entire AGREEMENT and recites the full consideration between the parties, there being no other written agreement.

SECTION 26
CUMULATIVE REMEDIES

In the event of default by any party herein, all other parties shall have all rights and remedies afforded to it at law or in equity to recover damages and to interpret or enforce the terms of this AGREEMENT. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

SECTION 27
WAIVER

The failure on the part of any party herein at any time to require the performance by any other party of any portion of this AGREEMENT shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision or any other provision. Any waiver by any party herein of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.

IN WITNESS WHEREOF, said City of Rosenberg has lawfully caused these presents to be executed by the City Manager of said CITY and the said ARCHITECT, acting by its thereunto duly authorized representative, does now sign, execute and deliver this instrument.

Authorized by the City of Rosenberg, Texas on the 15 day of June 2021,

BURDITT CONSULTANTS, LLC

Signature:

Charles Burditt
Name: Charles Burditt
Title: President
Date: 6-15-21

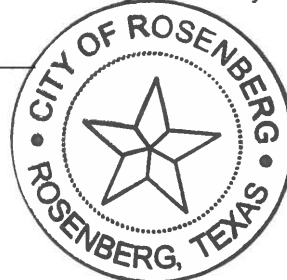
CITY OF ROSENBERG, TEXAS

John Maresh
John Maresh
City Manager

Date: 6-15-2021

ATTEST/SEAL:

Danyel Swint
Danyel Swint, TCMC
City Secretary



Attachment "A" to the Agreement

June 03, 2021

Sent Via Email: mpena@rosenbergtx.gov

Ms. Melissa Peña
Program Director of Capital Projects
City of Rosenberg
P. O. Box 32
Rosenberg, Texas 77471

RE: Scope of Work and Fee Proposal – Seabourne Creek Park Nature Center

Dear Ms. Peña,

We are excited to begin working together with City staff and other stakeholders in the design of a Nature Center at Seabourne Creek Park.

Based upon our understanding of the project, please find attached our detailed proposal for professional services outlined as *Exhibit "A" – Scope of Work and Fees*. We look forward to additional discussions regarding individual tasks, scheduling the project phases, and an initial project kickoff meeting following completed incorporation of the City's edits to the attached scope and City Council's approval of the Professional Services Agreement for Architectural Design Services.

Thank you for the confidence placed in our firm to execute this important project for the citizens of Rosenberg. Please advise with any questions or revisions you see as appropriate. We look forward to the opportunity to work with you and other staff members.

Very Sincerely,



Charles Burditt
President

CB/ek

cc: Travis Tanner, AICP, Executive Director of Community Development
Rigo Calzoncin, Executive Director of Public Services
David Junek, Director of Parks and Recreation
Nathan S. Brandt, AIA, Project Manager
J. Shane Howard, Vice President

Attachment: Exhibit "A" Scope of Work and Fees
Exhibit "B" Burditt Consultants LLC 2021 Hourly Rates
Exhibit "C" Terms and Conditions

Conroe:
310 Longmire Road
Conroe, Texas 77304

Bryan:
105 N. Main, Ste. 123
Bryan, Texas 77803

www.burditt.com

Conroe 936.756.3041
Bryan 979.977.5846
Fax 936.539.3240

Exhibit "A"

Scope of Work and Fees

PROJECT UNDERSTANDING

The City of Rosenberg's Seabourne Creek Nature Park is an extraordinary asset to the community and region providing a variety of passive and active park amenities. These include baseball, softball, youth football, hiking and jogging trails, fishing, picnicking, lake access and use, and the R. W. Lindsay Gazebo pavilion rental. Additionally, the park contains important wetlands serving ecological and education purposes, a butterfly garden, and demonstration plantings of various native plant material. For many years, a nature center has been considered an appropriate addition to the park; however, such plans have always been dependent on funding opportunities.

The park plays host to a variety of nature enthusiasts and volunteers throughout the year; primary of which is the Coastal Prairie Chapter of the Texas Master Naturalists. Events and opportunities are available throughout the year to maintain the wetlands and prairies. Also, the park plays host to events such as the Prairie Heritage Festival, nature walks, and bird watching. In 2016, the Rosenberg Development Corporation (RDC) funded a Nature Center Feasibility Study for purposes of fundraising. The feasibility report provided general programming, pre-schematic renderings and floorplans.

The Scope of Work was derived from an introductory scoping meeting with City staff conducted virtually on April 21, 2021. Based upon the prior fundraising study and discussions with City Staff, the Project Construction Budget (including allowances and contingencies) is initially agreed to be Three Million Dollars (\$ 3,000,000.00 USD) and may be adjusted as required and authorized by the City as the project is finalized. The overall Project requirements and associated services are a detailed and iterative process; therefore, the following is not intended to be exhaustive. Rather, it serves to establish a basis of agreement on certain project parameters and an understanding of significant elements to be included in the Project Scope of Work. Following are certain facts, understanding of City expectations, and initial *Project Requirements* as we understand them:

- The City of Rosenberg owns a 164-acre Nature Park located at 3831 Highway 36 South, Rosenberg, Texas.
- The referenced site has been identified by the City of Rosenberg as the subject property for the new Seabourne Creek Park Nature Center to which the City requires professional architecture and engineering services for all phases of design including Schematic Design, Design Development, Construction Documents, Bidding, Construction Contract Administration and project closeout.
- The new facility is currently planned for approximately 8,000 gross square feet in area, and may include an interactive education space, small classroom, pavilion, restrooms, small kitchen (non-commercial), IT room, family restroom, lactation room, and support spaces.
- Both the building and sitework will potentially utilize sustainable design strategies as the project requirements and probable cost data develops.
- Landscape and Irrigation drawings and specifications will be developed as an alternate bid.
- Site improvements associated with the facility may include the following:

- o Energy conservations measures, e.g. photovoltaics, rainwater and greywater harvesting/reuse, etc.
 - o Parking, sidewalks, and trail(s)
 - o Outdoor nature play and learning areas (covered and/or uncovered)
 - o Picnic Shelters
 - o Bus Drop off
 - o Stormwater Detention System (site drainage, ponds, etc.)
 - o New fencing and screening as required
 - o Landscaping, hardscape, and irrigation
 - o Site Lighting and Utilities (No overhead utilities allowed in park)
 - o Entry monument sign at SH36
 - o Solar meridian and analemma elements
 - o Site wayfinding and educational signage
-
- A sealed topographic and boundary survey will be provided by Burditt as a supplemental service.
 - A sealed geotechnical engineering report will be provided by Burditt as a supplemental service.

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SCOPE OF BASIC SERVICES

I. PRELIMINARY DESIGN PHASE:

Review of prior Feasibility Study, Schematic Design of facilities, site structures, landscape, hardscape, and development of revised Opinion of Probable Cost (OPC). Meetings as listed are intended to be *virtual*.

1. Conduct initial Project Kickoff Meeting (virtual) with City and Design Team. During this meeting, a recommended Project Schedule will be presented for consideration. Tasks will be addressed, and project goals and objectives reaffirmed.
2. During initial meetings with City, the Design Team will confirm previous design intentions and preliminary program needs, improvements, limits of work, and team member roles.
3. Review and affirm recommendations with City from the *Seabourne Creek Park Nature Center* Fundraising Report and latest City-approved target budget (Opinion of Probable Cost -OPC) from which to initiate the project. Conduct new discussion of design intentions and City's desired program.
4. Review the preliminary site assessment of the subject property, including, confirming preliminary site attributes, such as topography, floodplain data, accessibility, preliminary traffic-impact review, drainage features, existing landscape features/vegetation, tree canopy requirements, and suitability for intended use.
5. Initiate a preliminary review of relevant and current regulatory Zoning Ordinances and Code requirements adopted by Authorities Having Jurisdiction (AHJ).
6. Review previous conceptual facility plans and program and develop Schematic Design Phase floor plans from which to finalize a schematic floor plan of the proposed Nature Center.
7. Receive feedback on goals and vision from City staff and City recommended stakeholders, if any.
8. Develop schematic exterior and selected interior views of the proposed Nature Center.
9. Develop schematic designs of desired site improvements, including landscaping, hardscape, parking (and overflow), and any selected amenities such as trails, playgrounds, etc.
10. Confirm sustainable development opportunities and associated systems to be considered as part of the Schematic Design.
11. Develop rendered illustrations of selected exterior and interior views of the proposed Nature Center and associated site improvements.
12. Update OPC in association with more fully developed Schematic Design of facilities, site structures, landscapes, and other improvements.
13. Meet with City staff for review and comment of Schematic Designs, rendered illustrations, and updated OPC.

14. Upon staff's direction, present selected rendered illustrations of Schematic Designs to City elected officials, Parks Board, City boards or committees, and City selected stakeholders.
15. Revise Schematic designs as directed by staff.
16. Upon request, prepare and present revised Schematic Designs to City-selected audience(s) to assist with project funding
17. Upon approval of Schematic Design and OPC by City, proceed with Final Design Phase.

II. FINAL DESIGN PHASE:

Design Development Services, Construction Documents (i.e. drawings, equipment schedules, specifications), and Permit Review

A. DESIGN DEVELOPMENT

1. Proceed with Design Development services (Architecture, Civil Engineering, Structural Engineering, MEP Engineering, Landscape Architecture, and Irrigation) to further develop staff-approved Final Schematic Design to prepare Design Development Drawings.
2. Prepare Preliminary Civil Engineering, Structural Engineering, MEP Engineering, Architecture, Landscape Architecture Drawings and Irrigation Design Development Drawings.
3. Facilitate a pre-development meeting with the City of Rosenberg staff to confirm relevant development, code requirements, including fire lane access requirements, tree planting or preservation requirements, driveway access, flood zone considerations, etc.
4. Prepare Draft/Outline Specifications which include but are not limited to site and civil elements, lighting/plumbing fixtures, HVAC systems, door hardware/ card reader requirements exterior/interior finishes, equipment, and built-in furnishings for review and approval by City staff.
5. Meet with key City staff to review Design Development drawings and Outline Specifications at regular intervals.
6. Coordinate with City IT (technology) staff to provide conduit, power, and data and security infrastructure in Drawings including building and parking lot security cameras and data drop conduits for CAT 6 or newer cabling as required for City provided/procured Communications, Audio/Video, and Electronic Security systems (Card Readers).
7. Revise drawings, details, Outline Specifications, and updated OPC as applicable.
8. Present Final Design Development Drawings, Outline Specifications, and updated OPC.
9. Upon approval of Design Development Phase and OPC by City, proceed with Construction Document Phase.

B. CONSTRUCTION DOCUMENTS

1. Revise and update Design Development drawings from Architect, Civil/MEP/Structural Engineers, Landscape Architect, Licensed Irrigation Designer, as required to prepare Construction Documents.
2. Review and develop bidding requirements (front end documents/bid forms) with staff/team.
3. Conduct initial assessment and preliminary accessibility review discussions with Burditt's Architect and Registered Accessibility Specialist (RAS).
4. Review Construction Documents with the City at specific progress review milestones (30%, 60%, 90%, and 100%) as approved by appropriate City staff members with professional oversight. At 60% provide comprehensive list of architect team provided specifications required for the project.
5. Update OPC at each progress review.
6. Produce Final Sealed Architecture Plans, Details and Specifications.
7. Produce Final Sealed Engineering (Civil, Structural, MEP) Plans, Details and Specifications.
8. Produce Final Sealed Landscape Architecture Plans, Details and Specifications.
9. Produce Final Sealed Irrigation Plans, Details and Specifications.
10. Produce final sealed construction project manuals for bidding, including but not limited to City provided front end contract documents, technical specifications, geo-tech report.
11. Submit for TDLR (TAS 2012) Review to Registered Accessibility Specialist (RAS). Registration Fee shall be reimbursed to Burditt by the City as the registrant (As pass-through fee in basic services scope.)
12. Submit construction documents to Authorities Having Jurisdiction (AHJ) for Permit Review and address any review comments (After final review with City).

-----THE FOLLOWING SERVICES SHALL BE PROVIDED UPON PROJECT FUNDING AND WRITTEN AUTHORIZATION BY THE CITY-----

III. BIDDING AND CONSTRUCTION PHASE SERVICES:

Project Manual (i.e. bidding requirements), Bidding/Contract Award Management Support, and Construction Contract Administration services.

1. Prepare Project Manual (bidding requirements and specifications) and assist staff with Bidding, Requests for Information (RFI), and Addendums as needed.
2. Prepare electronic copies of the bid package (sealed drawings and project manual) for distribution to potential bidders via Civcast.
3. Facilitate mandatory pre-bid meeting with City staff to review project scope, instructions to

bidders, bidding dates, and probable construction timelines/deadlines.

4. Respond to Requests for Information (RFI), questions from bidding contractors uploaded to Civcast in the form of Addenda posted to Civcast.
5. Prepare bid evaluation and provide contract award recommendations to City Staff.
6. Coordinate (or in coordination with the City) facilitate the Project Pre-Construction Conference.
7. Attend scheduled construction progress meetings at regular intervals.
8. Provide Construction Observation reviews appropriate to the stage of construction to:
 - a) Become generally familiar and remain so with, and keep the City staff generally informed about, the progress and quality of the portion of the construction completed. Prepare monthly Observation Reports to be submitted with monthly invoice. Include narrative and site photos.
 - b) Make reasonable efforts to identify and document defects and deficiencies in the construction.
 - c) Determine generally whether the construction is being performed in a manner indicating that the project, when fully completed, will be in accordance with the plans and specifications.
 - d) Notify the City in writing of any observed substantial deviation from the plans and specifications that may prevent the facility from being occupied or utilized for its intended use.
9. Issue Observation Reports to Contractor and City staff following site visits.
10. Review Change Orders and provide recommendations to address changed or unforeseeable conditions that may arise during construction.
11. Respond to contractors RFI's and Issue Architect's Supplemental Instructions (ASI) to modify the contract documents as required due to unforeseen conditions or demonstrably insufficient information to complete the Work.
12. Perform all required General Contractor Submittal Reviews for conformance of information provided with the design intent of the Contract Documents, including shop drawings, product submittals, test results, and other submittals from vendors and contractors. Review of submittals shall not be for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility.
13. Perform Preliminary Completion review of the project to prepare punch list items for full and final completion.
14. Submit Final Completion Report to Contractor and City staff.
15. Review and certify construction progress Pay Applications as submitted by Contractor.

16. Communicate and direct contractor to prepare and deliver "As- Built" drawings, specifications, and other Close-out documents per General Requirements.
17. Review Contractor provided "As-Built" Record drawings and specifications and Close-out documents. Submit final Close-out documents to City and Contractor.
18. Coordinate Registered Accessibility Specialist (RAS) inspection for obtaining Certificate of Substantial Compliance (TAS 2012) as a pass-through fee included in construction phase services scope costs
19. Conduct Final Completion Observation and Closeout; develop and deliver final report to City staff.
20. Walk through the project with Contractor and City staff approximately 11 months after the date of Final Completion, to review relevant warranty issues within the contract scope to be corrected by the Contractor.

IV. SCOPE OF SUPPLEMENTAL SERVICES:

1. Upon determining the geographic limits of the Work during Schematic Design, the Architect will procure a sealed topographic and boundary survey of the relevant property construction area. The survey will indicate any floodplain boundaries and relevant flood elevation data within the vicinity of the project. Existing elements within the limits of the boundary survey will be located and identified, i.e.: existing restroom and parking, power-poles, communication tower, utilities, trees, drainage structures, etc.
2. Upon approved placement of the building and site improvements, the Architect will prepare a soils boring layout plan for City staff to review and approve. Architect will procure a sealed Geotechnical Report with subgrade, fill, paving and foundation recommendations to be used for civil and structural engineering, based on approved boring layout and quantities.

V. SERVICES GENERALLY:

A. Basic Services includes the following technical and design disciplines and are included in the Basic Services Fee as depicted in the Fee section of this proposal:

1. Architectural Design
2. Civil Engineering Design (including SWPPP and NOI requirements per TCEQ)
3. Structural Engineering Design
4. MEP Engineering Design
 - a. Coordinate with CPE and provide bid allowance for underground service requirements
5. Landscape Architectural Design Elements
 - Planting
 - Hardscape
 - Irrigation
 - Wayfinding/Educational Sign layout and details

Any services falling outside of those listed above or changes to the Scope of Services will be treated as Additional or Supplemental Services.

B. Additional Services include, but are not limited to, any changes due to revisions in the base data relating to this matter, additional design changes following approval by the City, and any other services requested by the City or previously not contemplated in the services defined under Basic Services. Additional services will be undertaken only with prior written authorization from the City.

Substantive changes or increases to the Project Scope and Program beyond those identified in Project Understanding and Scope of Basic Services may be considered Additional Services and require mutually agreed upon fee adjustments.

Additional Services would include, but are not limited to, the following specialties as they are uniquely determined by individual project needs in highly specific circumstances and not contemplated in Basic Services Fees.

1. Cost Recovery Analysis
2. Life Cycle Cost Analysis
3. Archaeological Studies or Services.
4. Ecological/Environmental or Hazardous Assessment
5. Hazard remediation for Asbestos, Brownfield Sites, site contamination, and other hazardous elements.
6. Tree Survey
7. Historic Preservation
8. Fast-Track Design Services
9. Re-design of key elements of project after receipt of prior Owner Approval
10. Commercial Food Service Design
11. Fire Suppression System Design (Performance Specification will be provided if required by Code)
12. Lightning Protection Design
13. Telecommunications/Data Design (Conduits and cabling to back-boxes in base design)
14. Audio/Video systems Design (Conduits and cabling to back-boxes in base design)
15. Security systems Design (Conduits and cabling to back-boxes in base design)
16. Emergency Power Generation Systems/Design
17. Off-site utility infrastructure Engineering/Design. (Coordinate for services in base design)
18. Construction Materials Testing (By contractor)
19. Design of off-site utility infrastructure improvements.
20. As-Built Plans
21. Measured Drawings of Existing Facilities
22. Existing Facilities Survey/3D Scanning
23. Traffic Impact Analysis (TIA).
24. LEED Design or Application/Audit.
25. Building Information Models for post construction use
26. Commissioning
27. Fire Hydrant Flow Test for Fire Suppression and/or Plumbing Design
28. USACE 404 Permitting or other Wetland and Endangered Species Mitigation

C. Supplemental Services include certain project requirements necessary for the fulfillment of the Basic Services, but which are treated separately from Basic Services or will be provided by the City. Such requirements would be determined collaboratively between the City and Burditt. Any of these services which the City determines should be addressed as Supplemental Services by Burditt will be followed by formal proposals from subconsultants to be approved by the City with costs reimbursed to Burditt plus applicable administrative markup fees. For this project, the potential additional project requirements are anticipated to include:

1. Surveying by a licensed surveyor (metes & bounds, easements, utilities, existing improvements, etc.)
2. Geotechnical engineering report with soils boring.
3. All permits and/or fees as required by authorities having jurisdiction.

D. Deliverables include printed copies as requested by the City and electronic copies in portable document format (PDF).

BASIC SERVICES FEE PROPOSAL

Based on the proposed Exhibit "A" Scope of Basic Services and general program as currently understood, we propose the following lump sum fees:

I. BASIC SERVICES FEE:

A. Methodology - Basic Services Fees are based upon a total lump sum fee of TEN and ONE-HALF PERCENT (10.5%) of the initial City approved project budget of **THREE MILLION DOLLARS (\$3,000,000)**.

B. Basic Services Fee Development -

Fixed Fee / Lump Sum amounts are billed according to the percentage of completion of each phase task as depicted in the Fee Schedule below. The following fee schedule is provided based upon the current program requirements.

1) Preliminary Design Services:

i. Schematic Design (20% of Fee).....\$63,000

2) Final Design Services:

i. Design Development (25% of Fee) \$78,750

ii. Construction Documents (35% of Fee).....\$110,250

Total Design Services (80% of Total Fee).....\$252,000

3) Upon City proceeding with construction of the project* -

Bidding and Construction Phase Services (20% of Fee).....\$63,000

****This Phase of services will commence ONLY UPON PROJECT FUNDING AND WRITTEN AUTHORIZATION by the City of Rosenberg to Architect for construction of***

the Project and any related onsite improvements.

4) Additional and Supplemental Services (See Part II below).....\$35,000

**Total Basic Fee Schedule (100% of Fee)..... \$350,000
(THREE HUNDRED EIGHTY THOUSAND DOLLARS)**

II. ADDITIONAL SERVICES & SUPPLEMENTAL SERVICES FEES:

Any relevant Additional Services or Supplemental Services will be discussed with the City and followed by a scope and cost proposal from the proposed subconsultant. This proposal will be submitted to the City for approval prior to engaging the subconsultant.

Current estimates of Additional or Supplemental Services for Boundary & Topographic Surveys and Geotechnical Testing and Report, within the Scope, Budget, and Limits of the Work of the Project, and including 10% administrative markup are:

Not to Exceed THIRTY-FIVE THOUSAND AND NO/100 Dollars (\$35,000)

Supplemental Services Fees are invoiced to the City at actual cost plus an administrative markup fee of 10% to account for tort and performance risk, coordination costs, and administrative costs. These costs will be invoiced to the City upon receipt of subconsultant invoices with copies of subconsultant invoices included for transparency.

III. EXPENSES:

All anticipated expenses are included in the Basic Services Fees. Therefore, no anticipated expenses are included within the fees for the current project scope. Additional sub-consultants or services that may be requested by the City in addition to those currently required for the project shall be provided as an Additional Service and shall be invoiced as described in II. Additional Services & Supplemental Services above.

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Exhibit "B"

BURDITT CONSULTANTS, LLC 2021 HOURLY RATES

HOURLY RATES APPLY ONLY TO ADDITIONAL SERVICES OR FOR REQUESTS MADE OUTSIDE OF BASIC SERVICES. Professional Services requested and approved by Client shall be provided at the following rates:

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$200
Program Manager	\$180
Project Manager	\$165
Project Architect/Landscape Architect	\$145
Senior Planner	\$145
Wetland Scientist	\$145
Senior Urban Forester	\$145
Natural Resource Planner	\$135
Licensed Irrigator	\$135
Geographic Information Systems (GIS) Planner	\$130
Planning Associate	\$130
Architecture/Landscape Architecture Associate	\$110
Natural Resource/Forester Associate	\$110
CAD Designer II	\$ 90
CAD Designer I	\$ 80
Administrative Assistant II	\$ 70
Administrative Assistant I	\$ 55

Invoices are prepared monthly with payments due 30 days from receipt. Interest at the rate of 1.5 % per month will be charged on all accounts not paid by the 30th day following the billing date. Necessary sub-consultants not currently required by project authorized and approved by Client shall be invoiced at cost plus ten percent (10%).

EXHIBIT "C"
TERMS AND CONDITIONS

ADDITIONAL SERVICES

Additional requested assignments outside the Basic Services Scope of Work will be invoiced at Burditt Consultants, LLC's published 2021 Hourly Rates or based upon an agreed upon lump sum amount. Additional services will be provided, with prior written authorization from Client.

PAYMENT OF FEES

For the scope of services stated herein, Client agrees to pay Consultant the compensation stated in this Agreement. Consultant agrees to submit invoices monthly for services rendered. Invoices shall be forwarded upon completion or, based upon the percentage of completion. Invoices are due and payable, in Rosenberg, Texas, within 30 days of receipt. Any invoice payment due past 30 days will be subject to interest at the rate of the lesser of (i) one and one-half percent (1.5 %) per month or (ii) the maximum rate allowed by law.

EXPENSES

There will be no expenses for Basic Services. Necessary expenses, such as copies (CAD plots), blue or blackline prints, xerox enlargements, shipping, etc., are already calculated into the Basic Services Fees; Additional sub-consultants beyond those currently required for Basic Service that are requested and authorized by Client shall be paid at cost plus ten percent (10%) after prior approval by City staff.

STANDARD OF CARE

The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

RISK ALLOCATION

Burditt Consultants, LLC agrees to carry out and perform the services herein agreed to in a professional and competent manner. In recognition of the relative risks, rewards, and benefits of the project both to the Client and Burditt, the risks have been allocated so that the Client agrees that, to the fullest extent permitted by law, Burditt's total liability to the Client, for any and all claims, losses, expenses, damages or claim expenses arising out of this agreement, from any cause or causes, shall not exceed the total amount of Burditt's fee or other amount agreed upon when added under Special Conditions. Such causes include, but are not limited to, Burditt's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

USE OF ELECTRONIC MEDIA

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of Client. With the exception of signed and sealed PDF copies of contract documents issued for permitting and/or construction, any conclusion or information obtained or derived from other electronic files will be at the user's sole risk. Signed and sealed PDF copies will be provided as bid documents to upload to Civcast and for use as reference during construction by the owner and contractor in addition to record hard copies. When transferring documents in electronic media format, Consultant makes no representations to long- term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

HAZARDOUS ENVIRONMENTAL CONDITIONS

It is acknowledged by both parties that Consultant's scope of service does not include any services related to the presence at the site of asbestos, PCBs, petroleum, hazardous waste or radioactive materials. Client acknowledges that Consultant is performing professional services for Client and Consultant is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA).

OPINIONS OF COST

When included in Consultant's scope of service, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional general familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Consultant's opinions or estimates of probable construction cost.

TDLR DOCUMENTATION

Pursuant to Texas Accessibility Standards (TAS) and ADA Requirements, Client is responsible for any fees associated with the review, filing and recording of the Construction Documents. If an Elimination of Architectural Barriers (EAB) project number is available, Client shall provide Burditt with the number prior to finalization of the Construction Documents. Pursuant to the requirements of the law, Burditt will file the plans for review.

CONSTRUCTION PHASE SERVICES

If this Agreement provides for any construction phase services by Consultant, it is understood that the Contractor, not Consultant, is responsible for the construction of the project, and that Consultant is not responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor.

TO BE PROVIDED BY CLIENT

Client shall provide the following information if available:

1. Legal descriptions of property and available Plat(s)
2. Any available site plans, relevant documents impacting design, drainage maps, existing utilities or easements.