

CITY OF LAGO VISTA, TEXAS

RESOLUTION NO. 16-1667

A RESOLUTION OF THE CITY OF LAGO VISTA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH COBB-FENDLEY AND ASSOCIATES, INC. FOR PURPOSES OF DESIGN, PHASING, SURVEYING, TDLR COORDINATION, BID PHASE, AND CONSTRUCTION PHASING FOR THE LAGO VISTA MIDDLE SCHOOL SAFE ROUTES TO SCHOOLS (SRTS) PROJECT.

WHEREAS, the City will need to start design and engineering work associated with the Safe Routes to Schools Grant awarded to the City by the Capital Area Metropolitan Planning Organization (CAMPO), and

WHEREAS, the City desires, through the Lago Vista Middle School Safe Routes to School Project CSJ # 0914-04-301, to construct safe, accessible and welcoming pedestrian and traffic improvements within and adjacent to the Lago Vista Middle School campus; and;

WHEREAS, after this initial design and engineering it will be necessary to monitor the construction of the improvements within and adjacent to the Lago Vista Middle School campus for purposes of overview and quality.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LAGO VISTA, TEXAS:

1. That the City Council authorizes the City Manager to sign the Professional Services Agreement.

AND, IT IS SO RESOLVED

PASSED & APPROVED this, the 17th day of November, 2016.

ATTEST:


Sandra Barton, City Secretary




Dale Mitchell, Mayor

On a motion by Councilwoman Smith, seconded by Councilman Sullivan, the above and foregoing instrument was passed and approved.

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AGREEMENT, is made and entered into this day by and between the City of Lago Vista, a municipal corporation, organized and existing under the laws of the State of Texas, acting by and through its duly authorized representative, and hereinafter referred to as the OWNER, and Cobb, Fendley, & Associates, Inc. acting by and through its duly authorized representative, hereinafter referred to as the ENGINEER.

WHEREAS, the OWNER has determined the need to undertake various projects that require general engineering services; and

WHEREAS, as a result of such apparent needs the OWNER has or will develop Work or Task Orders for specific Projects. Such Work or Task Orders will hereinafter be referred to as the PROJECT and will be attached hereto and incorporated herein as Attachment "A"; and

WHEREAS, to address the PROJECT needs, the OWNER requires professional engineering and associated services; and

WHEREAS, the ENGINEER, having professional and technical employees versed in fields of endeavor appropriate for the conduct of the PROJECT including employees duly licensed and registered to practice engineering in the State of Texas, and employees or Subconsultants duly licensed and registered in the State of Texas to provide land surveying and other required professional services, and has the professional abilities and expertise to undertake the required services; and

WHEREAS, the ENGINEER has agreed to provide professional engineering and related services for PROJECT, as is more fully set out in Attachment "A";

NOW THEREFORE, the OWNER and the ENGINEER, in consideration of their mutual covenants herein, agree in respect to the performance of the professional services to be furnished or rendered by the ENGINEER and to the payment for these services by the OWNER, as set forth above and hereinafter.

SECTION I

EMPLOYMENT OF THE ENGINEER

AND PERFORMANCE OF SERVICES

A. GENERAL

The OWNER agrees to employ the ENGINEER and the ENGINEER agrees to perform the professional engineering and other professional services as stated in Attachment "A" and in the Sections to follow; and, in rendering such services, the OWNER agrees to compensate the ENGINEER as stated herein. The OWNER will generally employ ENGINEER as follows:

1. For a PROJECT that arises out of known needs and/or is covered by the current budget of OWNER, the City Manager may approve and assign such PROJECT; or
2. City Council and/or City Manager may award ENGINEER a PROJECT after receiving a statement of qualifications and scope of services that best serve the needs of OWNER.

Nothing in this AGREEMENT provides for an exclusive arrangement with ENGINEER for all the engineering services which may be needed by OWNER,

but an assignment of specific engineering services pursuant to Work or Task Orders which are or will be attached hereto and incorporated herein as Attachment "A" and hereinafter referred to as the PROJECT. ENGINEER shall report to OWNER'S designated representative for the PROJECT (see Section IV also). To the extent of any conflict between the terms of this AGREEMENT, and the provisions set forth in Attachment A, the terms of this AGREEMENT shall control.

B. PERFORMANCE OF SERVICES

The ENGINEER'S associated subconsultants to be utilized in the performance of the PROJECT professional services (as described in Section II following) are identified in Attachment "C." The persons identified as principal ENGINEER and the subconsultants shown in Attachment "C" shall not be changed except with the OWNER'S prior written acknowledgment and concurrence, which shall not be unreasonably withheld. If MBE/WBE participation is required by law or the terms of the grant used to fund the PROJECT, and in the event that the ENGINEER proposes the termination of an identified "Minority Business Enterprise" (MBE) or a "Women Business Enterprise" (WBE) certified subconsultant firm from its employ on this PROJECT, the ENGINEER shall substitute a subconsultant firm of like certification. If the ENGINEER is unable to substitute a subconsultant firm of like certification, the ENGINEER shall provide OWNER with documentation of their efforts to acquire the services of a MBE/WBE replacement firm. The OWNER'S MBE/WBE certifications shall solely apply to this AGREEMENT.

C. GEOTECHNICAL LABORATORY SERVICES

If geotechnical laboratory services are provided for the PROJECT through this AGREEMENT, either by the ENGINEER or its subconsultant(s), these services shall be performed by a laboratory accredited, in soils or geotechnical testing as appropriate, by the American Association of Laboratory Accreditation or by the American Association of State Highway and Transportation Officials. The ENGINEER agrees to provide evidence to the OWNER of such accreditation on an annual basis for the duration of this AGREEMENT.

SECTION II

BASIC PROJECT SERVICES OF THE ENGINEER

The ENGINEER shall serve as the OWNER'S professional consultant in those phases of the PROJECT to which this AGREEMENT applies; and, will give consultation and advice to the OWNER during the performance of its services.

The ENGINEER shall, in the scope of its work, perform the services described in Attachment "A" which shall be attached hereto and incorporated herein for all purposes as the PROJECT. ENGINEER shall only commence the work described in Attachment "A" as authorized by the OWNER (in subsequent written authorizations to proceed) as described hereinafter. All work performed in connection with this AGREEMENT shall be performed in accordance with high professional standards, and within the time periods for the completion of the services required by this AGREEMENT. Once ENGINEER is authorized to perform services, ENGINEER shall commence the performance of the services within ten (10) calendar days following authorization and shall diligently pursue the same to completion in a timely manner.

If a time period for performance of the services is not set out herein, OWNER and ENGINEER may hereafter agree upon the time period for the completion of services.

As part of its Basic Services, ENGINEER shall provide OWNER on completion of any design, or any phase of a design, with the number of sets of plans for OWNER's use agreed to by OWNER and ENGINEER, but in no event fewer than five (5) sets, and sufficient sets for the use of Contractors and subcontractors in bidding out the PROJECT. ENGINEER may establish a fee to Contractors or subcontractors for complete sets of plans to be used by them as part of the bid process in accordance with customary practice within the area in which the PROJECT is located. All plans provided in connection with this AGREEMENT shall be certified by the ENGINEER as complying with all applicable Federal, State and local laws, and shall be signed and sealed by the ENGINEER. All subconsultants that perform a component of the design services required under this AGREEMENT, shall similarly prepare a plan showing their portion of the design work, as appropriate, which is similarly certified to, signed and sealed by the subconsultant.

SECTION III

CHANGES IN WORKSCOPE

OWNER, without invalidating this AGREEMENT or the PROJECT, may order changes within the general scope of the PROJECT by altering, adding to and/or deleting or deducting from the PROJECT to be performed. If any changes made under this clause to the PROJECT cause an increase or decrease in the ENGINEER'S cost of, or the time required for, the performance of part of the PROJECT, an equitable adjustment will be made by mutual agreement and the PROJECT will be modified in

writing accordingly. Notwithstanding the foregoing, should the PROJECT be changed or amended due to some error on the part of the ENGINEER, the only equitable adjustment that will be made shall be to the benefit of the OWNER.

SECTION IV

ADDITIONAL SERVICES OF THE ENGINEER

If ENGINEER determines that services outside the scope of PROJECT ("Additional Services") are required or recommended, or that ENGINEER is being asked by OWNER to perform services not covered by PROJECT, ENGINEER shall notify OWNER that such services are Additional Services, and the cost associated with their performance prior to undertaking them. Any provision in this Agreement to the contrary notwithstanding, OWNER shall not be liable to ENGINEER for the costs of any Additional Services in connection with the PROJECT unless OWNER has agreed in writing to the performance of the services, which have been identified to OWNER as Additional Services, including the cost for such services, prior to the commencement of such services.

SECTION V

THE OWNER'S RESPONSIBILITIES

The OWNER will:

- A. Provide full information as to its requirements for the PROJECT.
- B. Designate the OWNER'S REPRESENTATIVE for this PROJECT. ENGINEER understands and agrees that ENGINEER shall obtain instruction and direction of the services to be performed hereunder only from OWNER's designated

OWNER'S REPRESENTATIVE or other representative designated by OWNER in writing. ENGINEER shall not perform services directed or requested by any other person, unless approved by OWNER'S REPRESENTATIVE or other designated representative in writing. In the event ENGINEER is uncertain whether or not it is authorized to perform services, ENGINEER shall seek confirmation from OWNER'S REPRESENTATIVE or other designated representative.

- C. Assist ENGINEER by placing at its disposal available reports and other data relevant to the development of the PROJECT which OWNER has had performed in connection with the property or the PROJECT by other service providers.
- D. Assist ENGINEER in gaining entry to public and private property as may be required by the ENGINEER in the performance of their services under this AGREEMENT.
- E. Examine all studies, reports, sketches, estimates, proposals and other documents presented by the ENGINEER and render decisions pertaining thereto within a reasonable time so as not to unreasonably delay the services of the ENGINEER.
- F. Furnish, or direct ENGINEER (by way of written Supplemental Amendment to this AGREEMENT (see Section VI) to provide necessary Additional Services as stipulated in Section III of this AGREEMENT or other services as may be required by the OWNER.

SECTION VI

PAYMENTS TO THE ENGINEER

A. OWNER agrees to pay the ENGINEER as full compensation for the professional engineering and associated services herein contracted for as follows:

1. Basic Services: The total fee for all tasks identified in Attachment "A" shall not exceed the amount set out in Attachment "A" ("Basic Services Fee"). Unless otherwise agreed to by the parties in writing, reimbursable expenses, including, but not limited to copying charges, long-distance phone calls, travel expenses, will be included within the Basic Services Fee. If the parties agree that reimbursable expenses are to be billed separately, they shall also itemize the expenses that will be reimbursed and agree on a not-to-exceed amount for such reimbursable expenses.
2. Additional Services: Compensation will be charged based on the actual hours expended by ENGINEER'S personnel and billed at ENGINEER'S Standard Hourly Rates identified in Attachment "B" attached hereto and incorporated herein for all purposes. These rates shall be reviewed and renegotiated annually on the anniversary of the Agreement.
3. Reimbursable Expenses: Reimbursable expenses include transportation and subsistence, reproduction costs and similar items, as identified and agreed to by the parties hereto, and shall be invoiced at direct cost with no overhead mark-up.
4. OWNER agrees to pay ENGINEER a retainer in the amount of \$0.00 when this AGREEMENT is signed by OWNER. ENGINEER shall hold this retainer until completion or termination of this AGREEMENT. At

the time of completion or termination of this AGREEMENT, OWNER authorizes ENGINEER to apply the retainer to any unpaid invoices on this AGREEMENT and return the balance, if any, of the retainer to OWNER at OWNER'S address of record as set out above.

B. METHOD OF PAYMENT

1. Payments on account of ENGINEER'S work on the PROJECT shall be made to ENGINEER at its office, within thirty (30) calendar days after invoice is received and approved by OWNER for payment, subject to the terms of this AGREEMENT.
2. For all services rendered, payment for undisputed amounts is due as provided above, subject to the rights and remedies of OWNER. Invoices for payment of services shall not be submitted to OWNER more frequently than once per month. Billing shall include reasonable documentation of cost of services rendered during the previous month in such form and with such content as OWNER may reasonably require. Interest shall accrue on undisputed amounts which have not been paid in accordance with the provisions of this AGREEMENT and are past due, in accordance with the provisions of Section 2251.021 of the Texas Government Code, unless delay in payment is due to the fault of ENGINEER including improper, contested or inadequate billing procedures followed by the ENGINEER, or the exercise of any rights or remedies by OWNER under the terms of this AGREEMENT.
3. Invoice amounts in excess of the maximum not-to-exceed amount(s) identified above, incurred prior to OWNER'S written consent shall be at

ENGINEER'S risk and OWNER is not obligated to pay such billings or expenses. ENGINEER shall closely monitor the amount of their work and notify OWNER within five (5) working days when expenditures for any phase of work reaches eighty (80) percent of the maximum not-to-exceed amount(s) identified herein. Nothing herein shall be construed to require the OWNER to increase the approved maximum not-to-exceed contract amount(s) established under this AGREEMENT.

4. For all services rendered, ENGINEER'S payment to subconsultants is due within ten (10) calendar days after receipt of payment from the OWNER and, when appropriate, OWNER may issue joint checks to the ENGINEER and subconsultants.
5. Cost of services furnished by subcontractors or subconsultants on shall be reimbursed at invoice cost, unless otherwise agreed to by the parties in writing.

SECTION VII

TERMINATION AND DEFAULT

The OWNER shall have the right to terminate this AGREEMENT at any time after thirty (30) calendar days notice to the ENGINEER. OWNER shall pay the ENGINEER for services rendered and obligations incurred to date of termination and ENGINEER shall submit to the OWNER all Work and documents prepared to that point. Payment to the ENGINEER of lump-sum not-

to-exceed amounts shall be proportional to services performed to the date of termination.

In the event OWNER, through no fault of ENGINEER, fails to perform one or more of its obligations under the terms of this Agreement, ENGINEER shall provide OWNER with written notice of the default, and a reasonable opportunity to cure the same, but in no event shall such cure opportunity be less than thirty (30) calendar days. If OWNER fails to cure a material default, or to initiate appropriate action to cure a material default, within such cure period, then ENGINEER shall have the right, as its exclusive remedy, to terminate this Agreement, in which event OWNER shall be liable to ENGINEER for all services rendered and obligations incurred to date of termination and ENGINEER shall submit to the OWNER all Work and documents prepared to that point. Payment to the ENGINEER of lump sum not to exceed amounts shall be proportional to services performed to the date of termination.

In the event ENGINEER, through no fault of OWNER, fails to perform one or more of its obligations hereunder or defaults under the terms of this AGREEMENT, OWNER shall provide ENGINEER with notice of the default, and a reasonable opportunity, not to exceed thirty (30) days to cure the same. In the event a cure is not effected during such cure period, OWNER, in addition to any other rights and remedies provided by this AGREEMENT, shall have the right to pursue one or more of the following: (a) terminate this AGREEMENT, (b) withhold payments due to ENGINEER until the default is cured to OWNER's

satisfaction, or (c) pursue any rights and remedies available at law or equity. All rights and remedies provided by this AGREEMENT, or available at law or equity shall be cumulative and not exclusive, and may be exercised concurrently or successively.

SECTION VIII

SUCCESSOR AND ASSIGNS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors, executors and assigns. The foregoing notwithstanding, the ENGINEER shall not assign or transfer its interest in this AGREEMENT without the prior written consent of the OWNER. Any transfer or assignment made without OWNER'S prior written consent shall not be binding upon OWNER unless expressly ratified by OWNER in writing, and shall not relieve ENGINEER of its obligations hereunder.

SECTION IX

OWNERSHIP AND USE OF DOCUMENTS

The ENGINEER agrees that items such as plans, drawings, photos, designs, studies, specifications; data, computer programs, schedules, technical reports, or other work products which are required or specified to be delivered under this AGREEMENT, and which are to be paid for by the OWNER, are subject to the rights of the OWNER in effect on the date of execution of this AGREEMENT. These rights include the right to use, duplicate and disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so, and to use such items in

connection with the PROJECT and any subsequent alterations thereto. If an item produced by the ENGINEER is copyrightable, the ENGINEER may copyright it, subject to the rights of the OWNER. The OWNER reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. Without limiting the generality of the foregoing, if the services of ENGINEER are terminated under this AGREEMENT, OWNER shall have the right to use the work produced by ENGINEER, and to allow others to do so, in connection with the PROJECT. The ENGINEER shall include in its subconsultant contracts appropriate provisions to achieve the purpose of this Section VIII.

All such items furnished by the ENGINEER pursuant to this AGREEMENT are considered instruments of its services in respect to the PROJECT. It is understood that the ENGINEER does not represent such items to be suitable for reuse on any other project. If the OWNER reuses such items without the ENGINEER'S specific written verification or adaptation, such reuse will be at the risk of the OWNER, without liability to the ENGINEER. Any such verification or adaptation requested by the OWNER may entitle the ENGINEER to further compensation at an amount agreed upon between the OWNER and the ENGINEER.

SECTION X

ENGINEER'S RESPONSIBILITY AND LIABILITY

All services performed in connection with this AGREEMENT shall be performed in accordance with high professional standards, in a non-negligent manner, free from defects, and in accordance with the terms of this AGREEMENT. Acceptance and approval by the OWNER of the final PROJECT Report or other documents or services

produced by ENGINEER, shall not constitute nor be deemed a release of the responsibilities and liability of the ENGINEER for the accuracy and competency of the ENGINEER'S work products, design, or other documents, and services prepared/performed under this AGREEMENT. No approvals or acceptances by or on behalf of the OWNER shall be deemed to be an assumption of such responsibility by the OWNER for any defect, error or omission in said work products, design or other documents and services as prepared/performed by the ENGINEER or its subconsultants. Without limiting the generality of the foregoing, ENGINEER will assist OWNER in establishing a Fixed Construction Budget for the PROJECT, and in designing the PROJECT to fall within the Fixed Construction Budget. In the event that the PROJECT is let for bids, and the lowest responsible bid exceeds the Fixed Construction Budget, OWNER may (i) agree to proceed with the PROJECT as designed and pay the excess construction costs, (ii) terminate the PROJECT, or (iii) require the ENGINEER to redesign the PROJECT at no additional cost to OWNER, in accordance with design-criteria, specifications and plans approved by OWNER to fit within the Fixed Construction Budget. The ENGINEER'S opinions of probable construction costs provided for herein are to be made on the basis of the ENGINEER'S experience and qualifications and represent the ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the industry. Although the ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the ENGINEER cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions

of probable construction cost prepared by the ENGINEER, the OWNER shall have the rights provided for in this Section.

The ENGINEER further agrees to correct programs or documents or re-execute services as may be required due to the ENGINEER'S development of programs or documents which are found to be in error or contain defects or omissions at no additional cost to the OWNER.

Redesigns required or occasioned for the convenience of the OWNER shall be paid for as provided and prescribed hereinbefore under Additional Services of the ENGINEER, but only if such Additional Services are required in writing by OWNER as required herein.

If the ENGINEER's scope of services includes contract administration in connection with the construction of the PROJECT, the ENGINEER shall be responsible for overseeing the Contractor's performance of its construction obligations, reviewing submissions required by the Contract Documents, responding to requests for clarification, reviewing applications for payment and advising OWNER whether to pay all or any portion of the same, reviewing the contractor's work for compliance with the Engineer's design and the Construction Documents, and reporting any problems or potential problems to the OWNER with regard to the construction, and keeping OWNER apprised of the Contractor's work, and assisting OWNER with disputes or claims with Contractor involving the work, all in a timely manner so as not to delay construction, and to prevent or mitigated consequences to OWNER of any of problem with the construction or Contractor's performance. The ENGINEER is not responsible for any failure of the Contractor to perform its contract obligations, but ENGINEER is responsible for the performance of ENGINEER's services in connection

with this AGREEMENT. The ENGINEER will also review the PROJECT prior to the expiration of any warranty period, and assist OWNER with identifying defects in material or labor and securing Contractor's repair or replacement of defective work.

ENGINEER understands that OWNER may require ENGINEER to temporarily suspend work. OWNER understands that the suspension of work by ENGINEER may cause ENGINEER to incur additional costs to resume work, whether on Basic or Additional Services, and OWNER agrees to reimburse ENGINEER for such reasonable and unavoidable additional costs in an amount to be agreed upon by ENGINEER and OWNER in writing at time ENGINEER has been given written notice of the suspension.

SECTION XI

PERIOD OF SERVICE

- A. The ENGINEER contracts and agrees to commence work provided for herein within five (5) working days from the date of OWNER'S written authorization to proceed for each phase of work identified in Attachment "A."
- B. This AGREEMENT shall remain in force for a period required for the completion of the PROJECT, including required extensions thereto and warranty period services, unless discontinued by any of the several provisions included elsewhere in this AGREEMENT.

SECTION XII

MAINTENANCE OF AND RIGHT OF ACCESS TO RECORDS

The ENGINEER agrees to maintain appropriate accounting records of costs, expenses and payrolls of employees working on the PROJECT together with documentation and evaluations and study results, for a period of five (5) years after final payment for completed services and all other pending matters concerning this AGREEMENT have been closed. The ENGINEER further agrees that the OWNER, or their duly authorized representative(s), shall have access to any and all books, documents, papers and records of the ENGINEER which are directly pertinent to the services to be performed under this AGREEMENT for the purposes of making audit, examination, excerpts and transcriptions.

SECTION XIII

VENUE

VENUE AND JURISDICTION OF ANY SUIT, RIGHT OR CAUSE OF ACTION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES CONSENT TO VENUE EXCLUSIVELY IN, COURTS OF COMPETENT JURISDICTION IN TRAVIS COUNTY, TEXAS, OR IN FEDERAL COURTS IN WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION.

SECTION XIV

INSURANCE REQUIREMENTS

The ENGINEER agrees to carry and maintain insurance in the following types and amounts for the duration of this AGREEMENT, and furnish certificates of

insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

1. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers Liability of \$100,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee.
 - a. Waiver of Subrogation in favor of the OWNER, endorsement WC420304.
 - b. Thirty (30) Calendar Day Notice of Cancellation in favor of the OWNER, endorsement WC 420601.
2. Commercial General Liability with a combined single limit of \$500,000 per occurrence for coverages A&B including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:
 - a. Blanket contractual liability coverage for liability assumed under the AGREEMENT and all contracts relative to the PROJECT.
 - b. Independent Contractors coverage.
 - c. OWNER listed as an additional insured, endorsement CG 2010.
 - d. Thirty (30) calendar day Notice of Cancellation in favor of the OWNER, endorsement CG 0205.
 - e. Waiver of Transfer of Rights of Recovery Against Others in favor of the OWNER, endorsement CG 2404.
3. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for

bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the OWNER:

- a. Waiver of Subrogation endorsement TE 2046A.
 - b. Thirty (30)-calendar day Notice of Cancellation, endorsement TE 0202A.
 - c. Additional Insured, endorsement TE 9901B.
4. Professional Liability Insurance with a minimum limit \$500,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs, or specifications prepared or alleged to have been prepared by the assured. The policy shall provide for thirty (30) calendar day notice of cancellation in favor of the OWNER.

ENGINEER shall require each Subconsultant to maintain the same insurance with the same endorsements in favor of OWNER, unless otherwise agreed by OWNER in writing.

General Requirements

The ENGINEER shall be responsible for insurance premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above.

Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this

AGREEMENT and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The ENGINEER shall maintain continuous coverage for the duration of this AGREEMENT and for not less than twenty-four (24) months following substantial completion of the PROJECT. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the PROJECT. The ENGINEER shall, on at least an annual basis, provide the OWNER with a certificate of insurance as evidence of such insurance.

If insurance policies are not written for amounts specified above, the ENGINEER shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

The ENGINEER shall not commence work under this AGREEMENT until they have obtained the required insurance and until such insurance has been reviewed by the OWNER. The ENGINEER shall not allow any subconsultants to commence work until the required insurance has been obtained and approved. Approval of insurance by the OWNER shall not relieve or decrease the liability of the ENGINEER hereunder.

Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A. M. Best rating of B+VII or better.

Certificate of Insurance and all endorsements shall read:

City of Lago Vista
5803 Thunderbird St.
Lago Vista, Texas 78645
Attn: City Manager

The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on the policy. It is intended that policies required in

this AGREEMENT, covering both the OWNER and the ENGINEER, shall be considered primary coverage as applicable.

The OWNER shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

The ENGINEER shall not cause any insurance required under this AGREEMENT to be canceled nor permit any insurance to lapse during the term of this AGREEMENT.

The OWNER reserves the right to review the insurance requirements of this section during the effective period of the AGREEMENT and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the OWNER based upon changes in statutory law, court decisions or the claims history of the industry as well as the ENGINEER (such adjustments shall be commercially available to the ENGINEER). If the implementation of such revised insurance coverages/limits would result in additional costs to the ENGINEER, the ENGINEER may request additional compensation from the OWNER under the provisions of Section V, Paragraph B herein.

Actual losses not covered by insurance as required by this AGREEMENT shall be paid by the ENGINEER.

The ENGINEER hereby expressly agrees to indemnify and hold harmless the OWNER and the OWNER'S officers, agents and

employees, from and against all expenses, claims, demands, costs, causes of action, and liability of every kind and nature, including reasonable attorney's fees for the defense of all claims and demands (collectively, "Costs"), arising directly from, or in any way connected with, but to the extent caused by, the negligent performance of services in connection with this AGREEMENT by the ENGINEER, its officers, agents, employees and parties with whom it contracts, including Subconsultants, and from all Costs in connection with injury or property damages arising from the performance of services under this Agreement by ENGINEER, its employees, agents, representatives and parties with whom it contracts, including Subconsultants.

OWNER and ENGINEER waive subrogation and hereby release each other, and their respective employees and officers, and representatives from liability for all damages, expenses and costs ("Costs"), to the extent, but only to the extent, that such amounts are covered by insurance proceeds actually paid and applied to the satisfaction of such Costs.

SECTION XV

POLLUTANTS AND HAZARDOUS WASTES

It is understood and agreed by both parties that ENGINEER has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition ("Hazardous Conditions") present at the PROJECT as of commencement of the work on the PROJECT ("Preexisting Hazardous Conditions"), if any, and ENGINEER'S compensation hereunder is not commensurate with the potential risk of injury or loss that may be caused by exposure to such Hazardous Conditions. The parties agree that in performing the services required by the PROJECT and this AGREEMENT, ENGINEER does not take possession or control of the subject site and is not therefore responsible for the existence of any pollutant present on or migrating from the site, except for any Hazardous Conditions introduced, caused or created by ENGINEER or its representatives or subcontractors. ENGINEER shall have no responsibility for any

Preexisting Hazardous Condition during clean-up, transportation, storage or disposal activities related to those Pre-existing Hazardous Conditions, provided that ENGINEER has not acted in a way that has exacerbated any such Preexisting Hazardous Condition or increased the cost of or difficulty of removing such Preexisting Hazardous Condition and remediating the site. ENGINEER and its Representative and Subcontractors shall promptly inform OWNER of any Preexisting Hazardous Condition or other Hazardous Condition upon discovery.

SECTION XVI

COMPLIANCE WITH ALL LAWS

During the performance of the services provided by this AGREEMENT, the ENGINEER agrees to comply, and to require its Subconsultants to comply, with all Federal, State and local laws and regulations applicable to the services or the Project.

SECTION XVII

CERTIFICATE OF ENGINEER

The individual(s) signing this AGREEMENT, acting as duly authorized representative(s) of the firm of ENGINEER hereby certify that neither they nor any other members of the ENGINEER'S firm which they represent have:

- A. Agreed, as an expressed or implied condition for obtaining this AGREEMENT, to employ or retain the services of (1) any firm or person in the employ of the OWNER or, (2) an OWNER official, in connection with carrying out the work to be performed under this AGREEMENT.

- B. Paid or agreed to pay as an express or implied condition for obtaining this AGREEMENT (1) any firm or person in the employ of the OWNER or, (2) an OWNER official, any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the work provided under the AGREEMENT.

The ENGINEER further acknowledges that this certification may be furnished to any Local, State and Federal Governmental Agencies of the United States in connection with this AGREEMENT and for portions of the PROJECT involving participation of Agency Grant funds and is subject to all applicable State and Federal laws, both criminal and civil.

SECTION XVIII

ADDITIONAL PROVISIONS

During the performance of the contract, ENGINEER agrees as follows:

- A. The Engineer will not discriminate against any employee or applicant for employment because of race, religion, color, gender, sexual orientation, gender identity, or national origin. The engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, gender, sexual orientation, gender identity, or national origin.
- B. The Engineer will, in all solicitations or advertisements for employees place by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race,

religion, color, gender, sexual orientation, gender identity, or national origin.

SECTION XIX

MISCELLANEOUS

A. SEVERABILITY

If any word, phrase, clause, sentence or provision of the AGREEMENT, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, such finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of the AGREEMENT, this being the intent of the parties in entering unto this AGREEMENT; and all provisions of this instrument are declared to be severable for this purpose.

B. CONSTRUCTION OF AGREEMENT

Although the AGREEMENT is substantially drafted by one (1) party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

C. ENGINEER'S PROJECT PURCHASES

All durable PROJECT equipment, tools, materials, etc., if any, purchased by the ENGINEER and invoiced to the OWNER shall be considered the property of the OWNER and shall be given over to the OWNER at the time of OWNER'S request or at the completion of the PROJECT.

D. FULL AND FINAL AGREEMENT

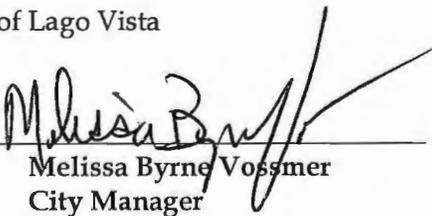
This AGREEMENT (consisting of this document and, where applicable, OWNER'S Request for Qualifications ("RFQ") which is incorporated herein by reference for all purposes to the extent that such RFQ is not inconsistent with this document and also including ENGINEER'S proposal and submittals, where applicable, to the extent that such proposal and submittals are not inconsistent with this document or the RFQ) constitutes the entire agreement of the parties concerning the subject matter hereof, and may only be amended by a written document signed by both parties. All prior and contemporaneous understandings, whether written or oral, are merged herein.

E. NOTICE

Any notice required to be given under the terms of this Agreement shall be in writing. Notice shall be deemed delivered, whether or not actually received, three (3) calendar days after it is deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed as set forth below with correct postage, with a copy sent concurrently by facsimile. Notice given in any other way shall be effective when and if actually received.

Executed to be effective as of the 17 day of November, ~~2015~~
2016

City of Lago Vista

By: 
Melissa Byrne Vossmer
City Manager

Address for Notice:

Mailing address:

City of Lago Vista
5803 Thunderbird
Lago Vista, Texas 78645

ENGINEER

Cobb, Fendley & Associates, Inc.

By: DWARM
Name: Dan Warth, PE
Title: Regional Manager

Address for Notice:

505 E. Huntland Drive
Suite 100
Austin, Texas 78759

List of Attachments:

- Attachment "A" -- Work or Task Orders ("PROJECT")
Attachment "B" -- Schedule of Hourly Rates for ENGINEER and its Subconsultants.
Attachment "C" --List of any Subcontractors/Subconsultants and whether
MBE/WBE
-

Attachment A

Work or Task Orders

SRTS Bar K Ranch Road

The City of Lago Vista is engaging in a Safe Routes to School Project along Bar K Ranch and within the Lago Vista Middle and High School areas. The project includes approximately 5,500 linear feet of 4' sidewalk improvements as illustrated on Exhibit 1. The following describes scope to provide Design, Bid, and Construction Phase Services for this project.

I. Sidewalk Design

I.A. Design Plans

This proposal assumes that sidewalk plans will be depicted on aerial imagery with direction to the Contractor on location of sidewalks and reference to sidewalk design standards to guide construction. However, based on initial field visits, several areas will require detailed engineered design drawings. These areas (described below) have either running or cross slopes that exceed TDLR standards and will require additional design. Refer to Exhibit 1 for a graphical description of the project areas. This proposal includes a design submittal at 60%, 90%, and 100% design completion.

- Area 1. Bar K Ranch Road. Steep slopes along the roadway will require survey to determine feasibility of including the sidewalk within the ROW. ROW survey along Bar K Ranch Road is also included.
- Area 2. Ball Field Access. If the City prefers to maintain the access drive in addition to the sidewalk it will require retaining walls to accommodate the 4' sidewalk and access drive. ROW survey along FM1431 has also been included. In addition, steep slopes along the south side of Bar K Ranch Road near FM1431 require survey to determine sidewalk design.
- Area 3. LVISD Ball Field Access. This area encompasses several subareas of steep slopes including around the parking spots, along the baseball field fence, and along the driveway.
- Area 4. LVISD Amphitheater. Steep slopes between the access drive and amphitheater could result in the need for retaining walls in this area.

Below is a detailed list of plan sheets included. Plans will be developed using TxDOT Standards.

- I.A1. Cover Sheet
- I.A2. Index Sheet
- I.A3. General Notes
- I.A4. Quantity Sheets.
- I.A5. Survey Control Sheet.

- I.A6. Legend / Typical Sections Sheet. This sheet will provide typical cross-sections to be referenced in the Sidewalk Layout Sheets. Anticipate creating a typical section for sidewalk next to rural roadway section, sidewalk next to curb and gutter roadway section, and sidewalk with swale.
 - I.A7. General Layout Sheet
 - I.A8. Sidewalk Layout Sheets. Schematic-level design over aerial imagery.
 - I.A8i. Bar K Ranch Road. 3,100 linear feet of new sidewalk design. 4 sheets.
 - I.A8ii. Pool Access Road. 500 linear feet of new sidewalk design. 1/2 sheet.
 - I.A8iii. Ball Field Access Road. 350 linear feet of new sidewalk design. 1/2 sheet schematic.
 - I.A8iv. Parking Lot Sidewalk Repair. 100 linear feet of sidewalk repair. 1 sheet schematic.
 - I.A8vi. LVISD Ball Field Access. 900 linear feet of new sidewalk design. 2 sheets schematic.
 - I.A8vii. LVISD Amphitheater Access. 150 linear feet of new sidewalk design. 1 sheet schematic.
 - I.A9. Sidewalk Detail Design Sheets. Specific area sidewalk design sheets.
 - I.A9i. Bar K Ranch Road. Detailed design at Bar K Ranch and Frontier Cove; details for ditch cross-section along Bar K Ranch Road from FM1431 to Chestnut Cove; and detail design at Bar K Ranch and FM1431 (3 sheets). Note that this proposal does not include detailed drainage design for the roadside drainage ditch.
 - I.A9ii. Ball Field Access Road. Detailed design for sidewalk design, roadway reroute, and potential retaining wall (1 sheet). Note that this proposal assumes that all retaining walls will be designed using TxDOT standards and will not require structural engineering design.
 - I.A9iii. LVISD Ball Field Access. Detailed design of sidewalk around parking spots; detailed design of sidewalk along ball field fence; and detailed design of sidewalk along driveway (3 sheets).
 - I.A9v. LVISD Amphitheater. Detailed design for sidewalk around amphitheater (1 sheet).
 - I.A10. Traffic Control Layout. Traffic control for sidewalk design will be presented in schematic with reference to standard details for device layout.
 - I.A11. Erosion and Sedimentation Control. Proposal assumes that TxDOT standard sheets (EPIC, SW3P Index, and SW3P Layout sheets) will be required for E&S.
 - I.A12. TxDOT Standards. Compile TxDOT standard detail sheets including sidewalk, traffic, drainage, and E&S).
- I.B. Specifications and Estimate.
- II.B1. Determine quantities for sidewalk, TCP, and drainage for each submittal for use in quantity sheets and bid form. The bid form will reference TxDOT standard bid items.
 - II.B2. CobbFendley will assemble a project manual. It is assumed that front end documents will be provided to CobbFendley and will be edited to be project-specific. Standard TxDOT Technical Specifications will be included for sidewalk design. A Table of Contents will be submitted at 60%. A complete project manual will be included with the 90% and 100% submittals.
 - II.B3. Cost Estimate. CobbFendley will prepare a cost estimate at each submittal.

I.C. QA/QC. An independent quality review check will be conducted prior to each submittal.

I.D. Project Management.

I.D1. Coordination / Review Meetings. This proposal assumes three (3) meetings with the City of Lago Vista, three (3) meetings with TxDOT, three (3) meetings with LVISD, and three (3) meetings with the City's grant administrator. This proposal does not include any additional submittals, reports, or coordination that might be required for the administration of the grant.

I.D2. Respond to reviewer comments. A formal written response will be returned to the reviewers at each submittal.

I.D3. Project Management. Preparation of project status updates, coordination with consultants, and general project management.

II. Survey.

The project area will encompass topographic site survey of 4 areas as discussed above and shown in Exhibit 1. A right-of-way survey will be performed along RM 1431 and Bar-K Ranch Road. The topographic and right-of-way survey is described below.

II.A. Topographic survey of described areas.

II.A1. Place a utility location request with "One Call" system designating of the underground utilities within the project limits.

II.A2. Establish Horizontal and Vertical control for the project utilizing the National Geodetic Survey (NGS) recent realization of the North American Datum of 1983 (NAD83), 2011 Epoch 2010.00 and the North American Vertical Datum of 1988 (NAVD88), Geoid 12B with references to published monuments, if available. A "combined scale factor" to develop surface values will be derived for coordinate conversion purposes based on the county average CSF established by the Texas Department of Transportation (TxDOT).

II.A3. Collect spot elevations and grade breaks within the project area at intervals of no greater than 50' and conducive to DTM generation.

II.A5. Collect topographic data that will include curbs, gutters, culverts, driveways, portions of parking areas, visible utilities and/or "one call" markings, drainage features, trees (as set forth in the City of Lago Vista. Zoning Ordinance, Chapter 14, Part IV, Section 20 Tree Preservation and Landscaping Requirements) and any improvements within the defined area. The Engineer shall generate a 1 foot contour interval DTM file of the project area. NOTE: reasonable attempts for measurements at silted drainage structures will be performed. Significant excavation of silt could result in seeking of additional fees for data acquisition.

II.B. Perform a Right-of-Way Boundary Survey for:

II.B1. RM 1431 from the east boundary line of Lago Vista High School to the west boundary line of the Lago Vista City Pool.

II.B2. Bar-K Ranch Road from RM 1431 to Frontier Cove.

Survey Deliverables

1. ASCII point file
2. AutoCad file with the right-of-way information in DWG format
3. AutoCad file with contours in DWG format
4. Digital Terrain Model with associated TIN file

III. TDLR Coordination

Altura Solutions will assist the project with TDLR Coordination. The scope of services will include registering the project with TDLR, reviewing the project plans, and inspecting the project after construction. Refer to the proposal from Altura Solutions, dated May 10, 2016 for a detailed scope of services.

IV. Bid Phase Services

CobbFendley will assist the City of Lago Vista in bid phase services. This scope assumes that Lago Vista will engage the services of a bid-phase assistance center for distribution of bid documents. CobbFendley's services are as described below:

- IV.A. Prepare advertisement.
- IV.B. Conduct pre-bid meeting.
- IV.C. Answer Contractor questions.
- IV.D. Prepare addendum. This proposal assumes preparation of one(1) addenda.
- IV.E. Conduct bid opening.
- IV.F. Evaluate bids.
- IV.G. Provide recommendation of award. This proposal assumes execution of contract documents will be performed by the City.

V. Construction Phase Services

CobbFendley will provide construction management and inspection services. Due to the nature of the plans it is assumed that field engineering will be required to determine exact layouts of sidewalk in some areas. This proposal assumes a 3-month construction duration. Construction management services are as described below.

- V.A. Conduct preconstruction meeting.
- V.B. Attend environmental pre-con in the field.
- V.C. Submittal Review. Review Contractor shop drawings and maintain submittal log. Assumes twenty (20) submittals to be reviewed not more than twice each. If subsequent reviews are required they will be conducted as an additional service at the cost of the Contractor.
- V.D. Construction Meetings. This proposal assumes bi-weekly construction meetings for a total of six (6) meetings.
- V.E. Site Visits. CobbFendley is assuming weekly site visits to address issues as they arise in the field. Duration of field visits is assumed as 4 hours. Total number of field visits is twelve (12).

- V.F. Requests for Information (RFIs). Respond to Contractor RFIs and maintain RFI log. Proposal assumes ten (10) RFIs.
- V.G. Change Orders. Assist the City in negotiating and preparing change orders. Proposal assumes one (1) change order.
- V.H. Pay Applications. Review and approve pay applications for City processing. Assumes three (3) pay applications.
- V.I. Final Walkthrough. Attend final walkthrough and assist in preparation of punch list.
- V.J. Record Drawings. Prepare record drawings based on Contractor and Inspector markups.
- V.K. Construction Inspection. Construction inspection services will be provided by D.L. Dial & Associates. Refer to proposal, dated May 11, 2016, for a detailed scope of services.

CobbFendley is proposing to perform these services for the lump sum fee of 175,783.00 Below is a breakdown by task of the fee estimate.

| Scope | Fee |
|------------------------|--------------|
| I. Design Phase | \$96,142.00 |
| II. Survey | \$20,137.00 |
| III. TDLR Coordination | \$2,427.00 |
| IV. Bid Phase | \$4,856.00 |
| V. Construction Phase | \$52,221.00 |
| Total Project Fee | \$175,783.00 |

Attachment B
COBB, FENDLEY & ASSOCIATES, INC.
2016 RATE SCHEDULE

| | |
|---|---------------------|
| Principal / Chief Engineer | \$260.00/HR |
| Senior Engineer | \$245.00/HR |
| Senior Project Manager | \$215.00/HR |
| Project Manager | \$190.00/HR |
| Senior Hydrologist | \$190.00/HR |
| Project Engineer IV | \$155.00/HR |
| Project Engineer III | \$135.00/HR |
| Project Engineer II | \$115.00/HR |
| Project Engineer I | \$95.00/HR |
| Senior Technician | \$130.00/HR |
| Technician III | \$110.00/HR |
| Technician II | \$100.00/HR |
| Technician I | \$80.00/HR |
| Licensed State Land Surveyor | \$210.00/HR |
| Registered Professional Land Surveyor | \$150.00/HR |
| 4-Man Survey Crew | \$170.00/HR |
| 3-Man Survey Crew | \$150.00/HR |
| 2-Man Survey Crew | \$130.00/HR |
| 1-Man Survey Crew | \$110.00/HR |
| Construction Manager | \$175.00/HR |
| Senior Field Construction Observer | \$110.00/HR |
| Field Construction Observer | \$95.00/HR |
| Senior Utility Specialist | \$150.00/HR |
| Utility Specialist | \$100.00/HR |
| Telecommunications Designer | \$100.00/HR |
| Telecommunications Fieldman | \$80.00/HR |
| GIS Manager | \$150.00/HR |
| GIS Analyst | \$100.00/HR |
| Right-of-Way Agent | \$115.00/HR |
| Administrative | \$90.00/HR |
| Clerical | \$70.00/HR |
| GPS | \$35.00/HR/Receiver |

Attachment B
COBB, FENDLEY & ASSOCIATES, INC.
2016 RATE SCHEDULE
(Continued)

SUBSURFACE UTILITY ENGINEERING

| | |
|---|------------------|
| One-Man Designating Crew (4-Hour Minimum) | \$90/HR |
| Two-Man Designating Crew (4-Hour Minimum) | \$150/HR |
| Vacuum Excavation Truck with 2 Technicians (Vac 3000 & 4000) (4-Hour Minimum).... | \$260/HR |
| Vacuum Excavation Truck with 2 Technicians (Vac 6000) (4-Hour Minimum)..... | \$280/HR |
| Ground Penetrating Radar with 1 Technician (4-Hour Minimum) | \$250/HR |
| Traffic Control Officer | @ Cost + 10% |
| Traffic Control (Lane Closures, etc.)..... | To Be Negotiated |
| Permits (Local, State, etc.)..... | @ Cost + 10% |
| Designation & Traffic Control Vehicles | \$3.40/Mile |
| Location Vehicles..... | \$6.80/Mile |

REIMBURSABLE EXPENSES

| | |
|--|-------------------|
| Technology Fee (*) | \$3.75/HR |
| Consultant or Specialty Contractor (Outside Firm) | @ Cost + 10% |
| Courier, Special Equipment Rental | @ Cost + 10% |
| Reasonable Out of Town Travel Expenses (Air, Hotel, Rental, etc.)..... | @ Cost |
| Mileage (Standard Car or Truck)..... | IRS Approved Rate |
| Per Diem for Out of Town Travel (Per Day/Person) | \$36/Day |
| Title Plant Charges | @ Cost + 10% |
| Other Misc. Expenses Related to the Project | @ Cost + 10% |
| In-House Reproduction: | |
| ➤ Copies (Up to 11" x 17")..... | \$0.15/Each |
| ➤ Color Prints (Up to 11" x 17") | \$1.50/Each |
| ➤ Color Prints (Larger than 11" x 17") | \$3.00/Sq. Ft. |
| ➤ Bluelines (All Sizes) | \$1.00/Each |
| ➤ Bond Prints (All Sizes) | \$2.00/Each |
| ➤ Mylar Prints..... | \$12.00/Each |
| ➤ Vellum Prints | \$9.00/Each |

(*) Technology charges added to each billable man-hour.

Attachment C Subconsultants

| Subconsultant | Expertise | MBE/WBE Status |
|------------------------|---|----------------|
| Arias Geoprofessionals | Geotechnical investigation, pavement design | MBE |
| aci consulting | Environmental consulting | WBE |
| DL Dial & Associates | Construction inspection | Small business |
| Altura Solutions | TDLR Review and Inspection | MBE |