

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

This agreement (“Agreement”) entered into by and between Clark Condon Associates, Inc., (hereinafter “Professional”) and the City of League City, Texas (the “City”), a Texas home-rule city.

1. Scope of Services/Professional Fees/Reimbursable Costs

This Agreement authorizes the Professional to perform professional engineering services for the **Claremont Connector Hike & Bike Trail (PK1703)** (Work”) for and on behalf of the City. The following attachment is attached to this Agreement and made a part hereof for all purposes.

ATTACHMENT NO. 1 – Clark Condon’s proposal dated January 26, 2017 (Rev.).

Professional shall not exceed the estimated cost or fees for any phase of the Work, including reimbursable costs, without written authorization from the City.

2. Professional’s Personnel and Sub-Consultants

a. Project Manager

Professional shall designate Sheila Condon, FASLA, to serve as Principal-in-Charge for the Work performed under this Agreement. Any change of Principal-in-Charge shall require thirty days’ advance written approval from the City’s Representative. Professional certifies that the Principal-in-Charge identified in the preceding sentence is a licensed or registered Landscape Architect in the State of Texas.

b. Licensed or Registered Landscape Architect

Professional shall keep a full-time registered or licensed Landscape Architect in the state of Texas on staff for the duration of its performance of the Work.

c. Professional’s Employees

Upon request, Professional shall forward to the City, detailed resumes of the personnel to be assigned to the Work. Such personnel includes, but not be limited to, landscape architects.

d. Rejection of Professional’s Employees

The City reserves the right to approve or reject from the Work any employees of the Professional.

e. **Professional's sub-consultants**

Copies of all proposed contracts with sub-consultants and/or subcontractors shall be given to the City before execution of such contracts.

3. Designation and Duties of the City's Representative

- a. The City's Interim City Manager, or his designee, shall act as the City's Representative.
- b. This City's Representative shall use his best efforts to provide non-confidential City records for Professional's usage on the Work and to provide access to City's property and easements.

4. Standards of Performance

- a. The Professional shall perform all services under this Agreement in accordance with the generally accepted landscape architecture practice per specialized discipline.
- b. Codes and Standards
 - (1) All materials furnished on any City project shall be in accordance with ASTM specifications, or with other recognized standards. Proprietary material or other materials for which no generally recognized standards exist may be used provided there has been at least five years of proven experience in the field, and such satisfactory documentation has been approved by the City's Representative.
 - (2) The Work shall be designed and furnished in accordance with the most current codes and/or standards adopted by City, State or Federal government or in general custom and usage by the profession.
 - (3) The codes and standards used in the profession set forth minimum requirements. These may be exceeded by the Contractor or the Professional if superior designs or materials are available for successful operation of equipment and/or for the construction project on which the Work is performed. Any alternative codes or regulations used shall have requirements that are equivalent or better than those in the above listed codes and regulations. The Professional shall state the alternative codes and regulations used.
 - (4) Professional agrees the services it provides as an experienced and qualified professional landscape architect will reflect the professional standards, procedures and performances common in the industry for this project. Professional further agrees that the design, preparation of drawings, the

designation or selection of materials and equipment, the selection and supervision of personnel and the performance of other services under this contract, will be pursuant to the standard of performance common in the profession.

- (5) Professional shall promptly correct any defective designs or specifications caused by Professional at no cost to City. The City's approval, acceptance, use of or payment for all or any part of Professional's services hereunder or of the Work itself shall in no way alter Professional's obligations or the City's rights under this Agreement.

5. Notice to Proceed

Professional shall not proceed with the Work or any stage thereof until written notice to proceed is provided by the City's Representative.

6. Insurance

- a. Professional shall procure and maintain insurance in the amounts listed below for protection from claims under workers' compensation, claims for damages because of bodily injury, including personal injury, sickness or disease or death of any and all employees or of any person other than such employees and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

Coverage

Limit of Liability

Workers' Compensation

Statutory for Worker's Compensation

Employer's Liability

Bodily Injury by Accident:
\$500,000 (Each Accident)

Bodily Injury by Disease:
\$500,000 (Policy Limit)
\$500,000 (Each Employee)

Commercial General:
(Including Broad Form
Coverage, Contractual
Liability, Bodily and
Personal Injury, and
Completed Operations)

Bodily Injury and Property
Damage, Combined:
Limits of \$500,000 each
Occurrence and \$1,000,000
aggregate (defense costs
excluded from face amount of
policy)

- b. Professional shall maintain professional liability (errors and omissions/malpractice) insurance in the amount of \$1,000,000. Professional shall provide a copy of its Certificate of Insurance to the City within ten days of contract

execution or this contract shall be null and void. A deductible is acceptable for professional liability insurance and the deductible limits shall not exceed \$25,000.

- c. Professional shall give the City thirty days' written notice prior to any change or cancellation of these insurance policies.

7. Indemnification

CONSULTANT SHALL INDEMNIFY, AND HOLD HARMLESS CITY, AND EACH OF ITS REGENTS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, TO THE EXTENT THAT SUCH COSTS ARE CAUSED BY THE CONSULTANT'S NEGLIGENT ACTS, ERRORS OR OMISSIONS. IN THE EVENT CLAIMS, LOSSES, DAMAGES OR EXPENSES ARE CAUSED BY THE JOINT OR CONCURRENT NEGLIGENCE OF THE CITY AND CONSULTANT, THE CONSULTANT SHALL BEAR ONLY SUCH COSTS THAT ARE IN PROPORTION TO ITS OWN PROPORTION OF NEGLIGENCE.

8. Ethics Acknowledgement

Any vendor or contractor entering into this contract or agreement with the City of League City, Texas expressly acknowledges that it has familiarized itself with the provisions of Section 2-34(i) of the Code of Ordinances of the City of League City which provides, among other things, that if within two years after the commencement of this contract or agreement the vendor or contractor hires a city official, former city official, appointed city officer, former appointed city officer, appointed city executive employee, or former appointed city executive employee or a city employee who, while acting in such capacity, had substantial and personal involvement with the negotiation of this contract or agreement, then this contract or agreement shall, at the option of the City Manager, be cancelled and/or the vendor or contractor shall be barred from additional contracting with the City of League City for a period of three years.

9. Termination of Professional

The City retains the right to terminate this Agreement "at will" and to pay only for the professional services and sub-consultant's and subcontractor's costs that were provided for and/or committed to and to that the City approved of prior to the date of termination. All engineering drawings, specifications and files shall be given to the City at the time of termination. Professional shall not be responsible for the City's misuse of completed drawings, specifications and files; nor shall Professional be responsible for any work by others used to complete partial documents.

10. Records

At the City's request, the City will be entitled to review and receive a copy of all documents that indicate work on the project that is the subject of this Agreement.

11. Supervision of Professional

Professional shall be subject to the direction and supervision of the City's Representative. However, it is agreed and stipulated that Professional is an independent contractor and that the City neither reserves nor possesses any right to control the details of the Work performed by Professional under the terms of this Agreement.

12. Billings

The City shall have thirty (30) days to pay Professional's bills from the date of receipt of such bills. All bills must identify with specificity the work or services performed and the date(s) of such work or services.

13. Payroll and Basic Records

Professional shall maintain payrolls and basic payroll records during the course of the work performed under this Agreement and shall preserve them for a period of three years from the completion of the work called for under this Agreement for all personnel working on such work. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

14. Default

In the event of a failure by either party to satisfactorily perform the services specified herein and/or a default by either party in abiding by the other terms and conditions of the Agreement, either party may terminate the Agreement on written notice to the other party and the defaulting party shall be liable for all damages, costs, and expenses (including attorney fees) incurred by the non-defaulting party related to this default.

15. Governing Law

This Agreement has been made under and shall be governed by the laws of the state of Texas. The parties further agree that performance and all matters related thereto shall be in Galveston County, Texas.

16. Notices

Notices required under this Agreement shall be mailed to the addresses designated below or such other addresses as the either of the parties may designate in writing from time to time, and

unless otherwise indicated in this Agreement, shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

For the City:

City of League City, Texas
300 West Walker Street
League City, Texas 77573
Attention: John Baumgartner, Interim City Manager

For the Professional:
Clark Condon Associates, Inc.
10401 Stella Link Road
Houston, Texas 77025
Attention: Sheila Condon, President

17. Waiver

No waiver by either party to this Agreement of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

18. Complete Agreement

This Agreement represents the entire and integrated agreement between the City and Professional in regard to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either whether written or oral, on the subject matter hereof. This Agreement may only be amended by written instrument approved and executed by both of the parties. The City and Professional accept and agree to these terms.

(execution block on next page)

Executed on the _____ day of _____, 2017.

CLARK CONDON ASSOCIATES, INC.

Sheila Condon
President

ATTEST:

Printed Name:
Printed Title:

CITY OF LEAGUE CITY:

John Baumgartner
Interim City Manager

ATTEST:

Diana M. Stapp
City Secretary

APPROVED AS TO FORM:

Nghiem V. Doan
City Attorney