



STANDARD AGREEMENT

(version 2-20-2018)

This AGREEMENT ("Agreement") is entered by and between **TBG Partners** ("Contractor"), located at **3050 Post Oak Blvd., Suite 1100, Houston, Texas 77056** and **City of League City** ("City"), a municipal corporation, located at 300 W. Walker, League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Contractor will perform the designated services and/or provided the designated products, as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Develop the site design and implementation documents for a 5 Kilometer Trail (5K Trail) in Hometown Heroes Park**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall begin on **May 8, 2018** and shall terminate on **August 1, 2022**. This City reserves the right to terminate this Agreement for convenience upon seven (7) days-notice to the Contractor. Upon such termination, the City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, the City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor. This Agreement is eligible for **NA** renewal option(s) with a term of **NA** year.
3. **Compensation:** Contractor shall be paid for the services, as set forth in **Exhibit A**, attached and incorporated for all purposes. In no event shall the total compensation exceed **\$93,000** during the term of this Agreement. The City shall pay Contractor in accordance with the Texas Government Code 2251. Contractor must submit invoices for all services, which invoices must include dates of service and details of services provided. Payment for delivery of services rendered shall not be unreasonably withheld or delayed. If the City disapproves any amount submitted for payment by Contractor, the City shall give Contractor specific reasons for disapproval in writing. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to the City.
4. **Insurance:** The Contractor **is** required to maintain insurance through the term of this Agreement.

If required by the City, Contractor shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence or medical malpractice insurance (whichever applies) throughout the entire term of the Agreement. If at any point during the Agreement, Contractor will enter City property, Contractor shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City.

Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of League City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by the City for such expenses except as otherwise provided in this Agreement.
6. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work for hire under federal copyright law. Ownership of the work shall belong to and remain the exclusive property of the City. The work may be edited at any time within the City's discretion. If the work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City of League City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the work, the City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within the City's discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein. If the work is one to which the provisions of 17 U.S.C. § 106A apply, the Contractor hereby waives and appoints the City to assert on the Contractor's behalf the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for the City's purposes.
7. **Confidentiality:** During the course of the work and/or services to be provided under this Agreement, Contractor may come in contact with confidential information of the City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by the City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify the City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to the City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of the City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of the City.
8. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by the City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
9. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
10. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under

this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.

11. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and the City that could be construed as a conflict of interest with regard to this Agreement.
12. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, AND EACH OF ITS DIRECTORS, 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, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
13. **Force Majeure:** Neither the City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.
14. **Notices:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.
15. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
16. **State Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
17. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
18. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for

in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by the City nor any other conduct, action or inaction of any representative of the City relating to this contract constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (iii) the City has not waived its right to seek redress in the courts.

19. **Entire Agreement:** This Agreement contains the entire Agreement between the parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the parties executed subsequent to this Agreement.
20. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
21. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
22. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
23. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Contractor's responsibility.
24. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
25. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
26. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

27. **Sovereign Immunity:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.
28. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of the City represents that he/she has authority to sign this Agreement on behalf of City.
29. **Non-Waiver:** No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
30. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
31. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

Executed on this ____ day of _____, _____. *(date to be filled in by City Secretary)*

TBG PARTNERS - "Contractor"



Blake Coleman, PLA, Principal

CITY OF LEAGUE CITY - "City"

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products
(11 number of pages, including this page)

See Next Page



February 28, 2018
Revised May 2, 2018

Mr. Chien Wei
Director of Parks & Cultural Services
City of League City
512 2nd St.
League City, Texas 77573

Re: Hometown Hero's Park 5k Trail
Landscape Architecture Services
TBG Project # H18083

Dear Mr. Wei:

The Broussard Group, Inc., dba TBG Partners (TBG) is pleased to present this proposal for professional design services for the above referenced project. This agreement is by and between the City of League City (Client) and TBG (the Landscape Architect).

TBG has prepared the following scope of services, which address your needs to provide design and construction documents associated with the proposed 5k Trail at Hometown Hero's Park in League City, Texas. Our service will include the following, and includes sub-consultants:

THE PROJECT

TBG will prepare and develop the site design and implementation documents to include paving, sitework, landscape, irrigation, trailheads, signage, fixed furniture, and lighting (circuitry by others), for the proposed 5k trail at Hometown Hero's Park

PROPOSAL INCLUSIONS AND EXCLUSIONS

TBG assumes the following for the basis of this proposal:

- A. TBG understands that this project will be delivered as one (1) construction document package. Division of documents into multiple phases or releases will result in additional services.
- B. TBG will submit all plans to the City of League City planning, public works, and building departments for sitework, landscape, and irrigation approval as well as coordination with CenterPoint Energy and Texas New Mexico Power for consent to encroach their respective easements.
- C. Structural engineering sub-consultant required for landscape elements will be designed and documented by TBG's structural engineer and is included in this scope of services.

- D. Land survey and geotechnical investigations required for design work will be provided by TBG's sub-consultant and are included in this scope of services.
- E. The Client will review and provide comments on drawings and outline criteria provided by TBG.

TBG excludes the following for the basis of this proposal:

- A. As-built documentation
- B. The following engineering tasks are not included in this scope of services:
 - 1. Civil engineering of roads, parking and site utilities
 - 2. MEP engineering for site lighting and electrical circuitry. These tasks will be performed by the selected contractor.

BUDGET

TBG will work with the Client to prepare and manage the development budget starting at Schematic Design. TBG will only proceed with each subsequent task of service upon receipt of the Owner/Client's authorization, based upon design documents and prepared budget. TBG will maintain conformance within each task of service of all documents with the budget. In the event that the approved development budget is reduced or increased by more than 10% between the time of approval of the schematic design task and the time of award of a construction contract, cost to modify drawings and specifications to meet the changed project scope and/or budget will be considered additional services.

SCOPE OF SERVICES

TBG utilizes a design process that allows projects to move from an idea to implementation, which includes Discovery, Development and Delivery.

- A. Discovery – To research, analyze and understand the site context as well as programmatic opportunities and constraints
 - 1. Task One: Site Inventory and Analysis
 - 2. Task Two: Program Assessment and Analysis.
- B. Development – To develop the project vision and craft the project's form and function
 - 1. Task One: Schematic Design
 - 2. Task Two: Design Development
 - 3. Task Three: Construction Documentation.
- C. Delivery – To implement the vision through the construction task with attention to detail
 - 1. Task One: Bidding and Negotiation Assistance
 - 2. Task Two: Construction Observation.

DISCOVERY

Task One: Site Inventory and Analysis – approximately 1 month

A. Description of Services

TBG will work with the project team to study and evaluate the existing conditions of the site and to organize opportunities and constraints for design solutions. Efforts within this task may include:

1. Site Visit
2. Tree and topo survey analysis
3. Context analysis
4. Site analysis
5. Precedent studies

B. Deliverables

Inventory and analysis drawings and diagrams.

Task Two: Program Assessment and Analysis – approximately 1 month

A. Description of Services

TBG will facilitate a series of interviews and design concept sessions with the Client to determine optimum approach(es) for landscape amenities and site elements.

B. Deliverables

1. Program inventory and assessment, including written narrative(s)
2. Project comp assessment and benchmarking of similar existing projects
3. We have assumed one (1) meeting with city staff during this task.

DEVELOPMENT

Task One: Schematic Design – approximately 1 month

A. Description of Services

TBG will develop a schematic design package for the above-mentioned site/project elements with a program based on the Client's and design team's objectives, as determined above. Schematic design will serve to organize the site with program elements based on a cohesive design theme:

1. Overall color-rendered illustrative master plan
2. Image boards that speak to design themes, materials and plant palette
3. Illustrative sections/elevations to convey design intent
4. Schematic design grading plan for site limits of work
5. Preliminary construction budgets

B. Deliverables

1. Production and issuance of 100% SD packages with associated cost projections at the 100% set.
2. We have assumed two (2) meetings with city staff as well as one (1) presentation to the 4B Corporation and one (1) presentation to the League City Parks Board during this task.

Task Two: Design Development - approximately 2 months

A. Description of Services

TBG will work with the Client and consultant team to further develop the design concepts for the project based on review and comment to the schematic design package, project budgets and the Owner's comments. This task will serve to finalize the site plan and selection of materials for the project. It is intended that the DD documents will be advanced to the level that allows the Owner to obtain a Guaranteed Maximum Price.

1. Detail sketches of plan enlargements, sections, elevations and material images to communicate design direction and intent.
2. Image presentation and representation of recommended materials selections, including hardscape, softscape and landscape elements.
3. Issuance of a design development drawing set. Design Development set will be issued to the Owner selected construction manager and/or general contractor for their use in refining the overall budget for construction.

B. Deliverables

1. Production and issuance of a 50% DD package and 100% GMP package with technical specifications.
2. We have assumed two (2) meetings with city staff as well as one (1) presentation to the 4B Corporation and one (1) presentation to the League City Parks Board during this task.

Task Three: Construction Documentation - approximately 3 months

A. Description of Services

TBG will prepare construction drawings and specifications to properly describe the scope of the project. These documents will be suitable for review and for competitive bidding purposes. These drawings will include the following:

1. Plan layout of all site hardscape, planting, irrigation and site amenities
2. Detailing that supports the hardscape, planting, and irrigation design.

B. Deliverables

1. TBG will provide the Client with a signed and sealed set of bid documents that are suitable for competitive bidding. All construction drawings will be produced at a suitable scale to show required details and project notes required to fulfill the construction of the project.
2. Along with the construction documents, a specifications manual will be provided to describe the quality of craftsmanship and materials for the project.
3. TBG will submit a 50% and 90% progress review of the construction document package for the Owner's review and comment (or at intervals requested by the Owner) prior to final submission of the IFC/Permit package.
4. We have assumed three (3) meetings with city staff as well as one (1) presentation to the 4B Corporation and one (1) presentation to the League City Parks Board during this task.

DELIVERY

Task One: Bidding and Negotiation Assistance – approximately 2 months

A. Description of Services

TBG will work with the client to issue supplemental instructions and clarifications to bidders as needed during this task. We will also assist the client in reviewing bid tabulations and make recommendations regarding qualified subcontractors. TBG will provide the following services during this task:

1. Respond to questions during the bidding and contract negotiations
2. Assist in the interview/recommendation of contractors

B. Deliverables

1. Clarification of addenda and/or supplemental drawings as required
2. Attendance at one (1) pre-bid meeting
3. Meeting with the Client to review and comment on bid tabulations and contractor recommendations – maximum of one (1) meetings.

Task Two: Construction Observation – approximately 3 months

A. Description of Services

TBG will visit the site during construction and be present for the Owner's meetings as indicated below. We will observe the work of the contractor to generally determine the contractor's performance and quality of the construction as related to the intent of the construction documents and specifications. We will observe grading, hardscape, planting and soil placement as well as irrigation installation. TBG will assist in the determination of the contractor's substantial completion and prepare a punch list initiating the contractor's maintenance and warranty obligation. Included within this scope will be:

1. Attend construction meetings and visit the site with the design team
2. Review submittals and RFI's

B. Deliverables

1. For the scope of this proposal, we have allocated a maximum of ten (10) construction/site meetings.
2. Review and prepare responses to contractor RFI's.
3. Review, mark-up and return of shop drawings and submittals
4. Provide field reports based on site observations

COMPENSATION

Each task below has been written on a lump sum fee basis for a fixed fee amount of **\$93,000**. This is based upon an estimated construction budget of **\$1,200,000** for landscape elements as provided by the Client. The fee for this basic Scope of Services will be billed monthly based on hours completed for each task as follows:

Scope	Description	
<i>Discovery</i>		
Task I.	Site Inventory and Analysis	\$ 1,500
Task II.	Program Assessment and Analysis	\$ 2,500
<i>Development</i>		
Task I.	Schematic Design	\$ 12,000
Task III.	Design Development	\$ 22,000
Task III.	Construction Documents	\$ 37,000
<i>Delivery</i>		
Task I.	Bidding and Negotiation Assistance	\$ 1,500
Task II.	Construction Observation	\$ 9,500
TBG Fees:		\$ 85,000
Reimbursables:		\$ 7,000
Total Contract Amount:		\$ 93,000

Note: This proposal includes fees for landscape architectural, structural and irrigation design services only. Fees for other sub-consultants such as architectural, MEP or civil engineering are not included in this proposal.

REIMBURSABLES

The following costs will be reimbursed at cost plus 10% and are included in the fee for professional services.

- A. Cost of copies for drawings, specifications, reports, cost estimates, xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract
- B. Travel associated with the project, including, but not limited to, mileage (at current federal rate), airfare, automobile rental, hotel and meals
- C. Cost of postage and shipping expenses other than first class mail
- D. Long-distance telephone and facsimile charges
- E. Cost of digital scanning
- F. Cost of printing for small and large format plots black and white as well as color plots



If the above scope of services and compensation outlined above meet with your approval, please sign below and return one copy of this proposal for our files. We look forward to the opportunity of working with you. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Blake Coleman'.

Blake Coleman, PLA
Principal

APPROVED: City of League City

BY

DATE



CONTRACT TERMS AND CONDITIONS

A. Effective Date

This agreement shall become effective upon its execution by the Client or when the Client provides written authorization to TBG to begin its work.

B. Standard of Care

TBG will perform its services in accordance with the standard of care expected of landscape architects doing projects of similar scope in the State of Texas. In performing these services, TBG cannot ensure perfection and therefore does not make any warranties, either expressed or implied, as to the quality of its services or of its drawings. To the extent that TBG is relying upon documents supplied to it by the owner or the owner's consultants, it shall be entitled to rely upon the accuracy of those documents in preparing its drawings.

C. Guaranty of Certifications

Unless specifically provided for elsewhere in this Agreement, TBG Partners makes no warranties, representations or guarantees that the project will actually achieve or receive any certification by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System of the U. S. Green Building Council, or any other similar state, local or national environmental building program. Similarly, unless otherwise provided for in this Agreement, TBG Partners makes no warranties, representations or guarantees regarding the energy use or operating costs or expenses of the project.

D. Parties to this Agreement

This is a professional services agreement that TBG is entering into for the exclusive benefit of the Client. There are no intended third-party beneficiaries of the agreement, and both TBG and the Client agree not to assign this agreement or any causes of action that arise under it without the express consent of the other party.

E. Statements and Payment

Fees for professional services and reimbursable expenses will be invoiced to the Client monthly based on the percentage of the work completed for each task. A task-by-task description of work performed will be submitted with each invoice at the Client's request. TBG reserves the right to suspend services in the event that invoices exceeding a total amount of \$5,000 remain unpaid for more than thirty (30) days.

F. Termination

The Client may terminate this agreement upon written notice to TBG, in which event the Client shall compensate TBG for all work performed by TBG prior to termination.

TBG may terminate this agreement upon ten (10) days' written notice to owner after the occurrence of any of the following:

1. The Client's failure to pay TBG's invoices within thirty (30) days;
2. Suspension of the project for more than sixty (60) days;
3. The Client's material default of any terms of this agreement; or
4. The Client's failure to execute this agreement.



G. Risk Allocation

TBG will be responsible only for its own work and not for defects in the work designed or built by others. TBG will not be responsible for consequential damages either to the Client or to other members of the construction team, including without limitation damages for delay or for construction inefficiencies for any cause whatsoever; in no event shall TBG be liable for damages to the Client, assignees, the contractor or its subcontractors for any claims or damages in excess of the amount of the fees paid to TBG by the Client.

H. Dispute Resolution

As a condition precedent to either the Client or TBG's filing of any claim in litigation, the President of TBG and the Client shall meet within thirty (30) days of a request by either party to attempt to resolve the dispute. TBG will not be required to participate in any mediation or arbitration proceeding with any parties other than the Client without TBG's consent. In the event of a dispute, neither TBG nor the Client shall be entitled to the award of attorneys' fees. Venue for any dispute arising out of the services provided by TBG under this agreement shall be in the District Court of Galveston County, Texas. Any applicable statute of limitations shall commence to run and any cause of action shall be deemed to have accrued not later than the date of substantial completion of the project on which TBG's services are provided.

I. Revised Project Budget

If the project budget defined by the scope of services is increased or decreased by more than ten percent (10%) after the design/development task, the time and effort required to redesign the project within the new budget will be considered additional services to this agreement.

J. Additional Services

Additional services are services that may be needed by the Client, but which are not included in the basic services. Additional services will be provided only with prior approval of the Client, and include but are not limited to the following:

1. Preparation and presentation of graphic exhibits other than those described in the basic scope of services.
2. Revisions and changes in drawings, specifications or other documents previously given by the Client, or the preparation of alternates or deductive change orders requested by the Client.
3. Preparation of record drawings or of measured drawings of existing conditions.
4. Providing prolonged construction observation should the construction time be substantially extended through no fault of TBG.
5. Providing services if, in Guaranteed Maximum Price (GMP) projects, the construction budget for TBG scope items is reduced through no fault of TBG.