

CONSULTING ENGINEERS CONTRACT

WHEREAS, this contract shall be administered on behalf of the **City** by its **City Engineer** or his duly authorized representative. The **Engineer** shall fully comply with any and all instructions from said **City Engineer**.

AGREEMENT

NOW, THEREFORE, the **City** and the **Engineer**, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

The **City** agrees to retain the **Engineer**, and the **Engineer** agrees to provide Services in connection with the Project as defined herein, and for having rendered such Services the **City** agrees to pay to the **Engineer** fee for these Services as mutually agreed. All Services under this Contract shall be performed under the direct supervision of the **City Engineer**.

1. Scope of Services.

- A. Basic Services Parts I & II: The work tasks and activities to be performed and deliverable to be provided by the **Engineer** shall be in accordance with Attachment A, Scope of Services, including modifications to the Basic Services as mutually agreed to by the **City** and the **Engineer** in accordance with the provisions of this Contract.
- B. Additional Services Not Included In Basic Services: When mutually agreed to in writing by the **City** and the **Engineer**, the Additional Services shall be provided by the **Engineer**. These Additional Services are not included as a part of Basic Services and shall be paid for by the **City** in addition to payment for Basic Services. Should it be determined that one or more of the requirements of this Contract conflict with the requirements of the Scope of Services, including modifications to the Scope of Services or any attachments to this contract; the requirement of the Contract shall govern.

- 2. **Progress Schedule.** Within ten (10) days after receiving Notice to Proceed (NTP) the **Engineer** shall submit to the **City** a Schedule of Services consisting of a listing of the major Project tasks, the estimated consultant hours required to perform the tasks, the percentage of the Contract budget estimated to be allocated to each task and a bar chart schedule showing task beginning and completion dates. Significant milestones for the Project shall be identified. At a minimum, milestones shall be provided for the three design submittals described in Attachment A, Scope of Services: Conceptual Design Submittal, Preliminary Design Submittal, and Final Plans, Specifications, and Estimate (PS&E) Submittal. Based on Schedule of Services, the **City** shall compile Attachment D, Project Schedule which shall become a part of this Contract upon approval of the **Engineer** and the **City**. The **Engineer** shall provide to the **City** information to report and monitor the design tasks within the Project Schedule by completing a "Design Progress Report" on a form provided by the **City**. The **Engineer** shall complete and provide to the **City** said report at two week intervals.

3. **Compensation.**

- A. Basic Services Fee: The **Engineer** shall be paid a fee for Basic Services under this Contract pursuant to the Fee Schedule described in Attachment A, Scope of Services. Basic Services Fee shall not exceed the lump sum of Two hundred and ninety-three thousand, nine hundred and forty dollars (\$293,000.00) provided, however, that modifications to the Basic Services, or other conditions defined herein may necessitate a change of Fee which shall be reduced to writing and approved by the City or its designee.
- D. Invoices: The **Engineer** shall submit invoices at not less than thirty (30) calendar days for Basic Services Part I and/or Basic Services Part II on or before the twenty fifth (25th) calendar day of the month, or the preceding business day if the twenty fifth occurs on a weekend and/or observed holiday. Payment shall be based on the invoices submitted to the **City**, provided that Services completed as indicated in the Design Progress Reports approved by the **City** equals or exceeds the increment percentage requested on the **Engineer's** invoices. **Engineer's** invoices to **City** shall provide complete information and documentation to substantiate **Engineer's** charges and shall be in a form to be specified by the **City Engineer**. Should additional documentation be requested by the **City Engineer** the **Engineer** shall comply promptly with such request.
- E. Payments: All payments to **Engineer** shall be made on the basis of the invoices submitted by the **Engineer** and approved by the **City**. Following approval of invoices, **City** shall endeavor to pay **Engineer** promptly, however, under no circumstances shall **Engineer** be entitled to receive interest on amounts due. The **City**, in compliance with Texas State law, shall process a maximum of one payment to the **Engineer** per month. **City** reserves the right to correct any error that may be discovered in any invoice whether paid to the **Engineer** or not, and to withhold the funds requested by the **Engineer** relative to the error.

4. **Fee Increases.** Any other provision in this Contract notwithstanding, it is specifically understood and agreed that the **Engineer** shall not be authorized to undertake any Services pursuant to this Contract requiring the payment of any fee, expense or reimbursement in addition to the fees stipulated in Article 3 of this Contract, without having first obtained specific written authorization from the **City**. The written authorization for additional Services shall be in the form of a Modification to the Scope of Services approved by the City Engineer and/or the City Council, if required.

5. **Modifications to the Scope of Services.** Either the **Engineer** or the **City Engineer** may initiate a written request for a Modification to the Scope of Services when in the opinion of the requesting Party, the needs and conditions of the Project warrant a modification. Upon the receipt of a request by either Party, the **Engineer** and the **City Engineer** shall review the

conditions associated with the request and determine the necessity of a modification. When the Parties agree that a modification is warranted, the **Engineer** and the **City Engineer** shall negotiate the specific modification(s) and any changes in the Total Maximum Fee or Project Schedule resulting from the modification(s). Approval of a modification shall be in the form of a written Modification to the Scope of Services which clearly defines the changes to the previously approved Scope of Services, Fee and/or Project Schedule. Said written Modification shall be approved by **Engineer**, authorized by the City Council, if required, and issued by the **City Engineer**. Issuance of the approved Scope of Services modification shall constitute a notice to proceed with the Project in accordance with the modified Scope of Services. The **City Engineer** may issue written Modifications to the Scope of Services without prior approval of the City Council when the modifications are to be accomplished within the authorized Total Maximum Fee and do not materially or substantively alter the overall scope of the Project, the Project Schedule or the Services provided by the **Engineer**.

6. **Project Deliverables.** For each submittal identified in Attachment A, Scope of Services, the **Engineer** shall provide the **City** with number of complete sets of drawings specifications and electronic file copies as described in Attachment A.

A transmittal letter shall be included with the Environmental Reports and shall include an executive summary outlining: a.) Findings of the Reports; b.) Conclusions; c.) Recommendations; and d.) Mitigation/remediation cost estimates.

7. **Project Control.** It is understood and agreed that all Services shall be performed under the administrative direction of the **City Engineer**. No Services shall be performed under this Contract until a written Notice to Proceed is issued to the **Engineer** by the **City Engineer**. In addition, the **Engineer** shall not proceed with any Services after the completion and delivery to the **City** of the Conceptual Design Submittal, Preliminary Design Submittal, or the Final PS&E Submittal as described in the Basic Services without written instruction from the **City**. The **Engineer** shall not be compensated for any Services performed after the said submittals and before receipt of **City's** written instruction to proceed.

8. **Partnering.** The **City** shall encourage participation in a partnering process that involves the **City, Engineer** and his or her sub-consultants, and other supporting jurisdictions and/or agencies. This partnering relationship shall begin at the Pre-Design Meeting and continue for the duration of this Contract. By engaging in partnering, the parties do not intend to create a legal partnership, to create additional contractual relationships, or to in any way alter the legal relationship which otherwise exists between the **City** and the **Engineer**. The partnering effort shall be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives of partnering are effective and efficient contract performance and completion of the Project within budget, on schedule, in accordance with the Scope of Services, and without litigation. Participation in partnering shall be totally voluntary and all participants shall have equal status.

9. **Disputes.** The **City Engineer** shall act as referee in all disputes under the terms of this Contract between the Parties hereto. In the event the **City Engineer** and the **Engineer** are unable to reach acceptable resolution of disputes concerning the Scope of Services to be performed under this Contract, the **City** and the **Engineer** shall negotiate in good faith toward resolving such disputes. The **City Engineer** may present unresolved disputes arising under the terms of this Contract to the City Manager or designee. The decision of the City Manager or designee shall be final and binding. An irreconcilable or unresolved dispute shall be considered a violation or breach of contract terms by the **Engineer** and shall be grounds for termination. Any increased cost incurred by the City arising from such termination shall be paid by the **Engineer**.
10. **Engineer's Seal.** The **Engineer** shall place his Texas Professional Engineers seal on all engineering documents and engineering data prepared under the supervision of the **Engineer** in the performance of this Contract.
11. **Liability.** Approval of the Plans, Specifications, and Estimate (PS&E) by the **City** shall not constitute nor be deemed a release of the responsibility and liability of **Engineer**, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, working drawings, tracings, magnetic media and/or computer disks, estimates, specifications, investigations, studies or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the **City** for any defect, error or omission in the design, working drawings, tracings, magnetic media and/or computer disks, estimates specifications, investigations, studies or other documents prepared by **Engineer**, its employees, subcontractors, agents and consultants. **Engineer** shall indemnify **City** for damages resulting from such defects, errors or omissions and shall secure, pay for and maintain in force during the term of this Contract sufficient errors and omissions insurance in the amount of \$250,000.00 single limit, with certificates evidencing such coverage to be provided to the **City**. The redesign of any defective work shall be the sole responsibility and expense of the **Engineer**. Any work constructed, found to be in error because of the **Engineer's** design, shall be removed, replaced, corrected or otherwise resolved at the sole responsibility and expense of the **Engineer**. The parties further agree that this liability provision shall meet the requirements of the express negligence rule adopted by the Texas Supreme Court and hereby specifically agree that this provision is conspicuous.
12. **Indemnification.** **Engineer** shall indemnify, hold harmless and defend the City of Coppel, its officers, agents and employees from any loss, damage, liability or expense, including attorney fees, on account of damage to property and injuries, including death, to all persons, including employees of **Engineer** or any associate consultant, which may arise from any errors, omissions or negligent act on the part of **Engineer**, its employees, agents, consultants or subcontractors, in performance of this Contract, or any breach of any obligation under this Contract. It is further understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this agreement shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise to any person or entity. The parties further agree that this indemnification provision shall meet the

requirements of the express negligence rule adopted by the Texas Supreme Court and hereby specifically agree that this provision is conspicuous.

13. **Delays and Failure to Perform.** **Engineer** understands and agrees that time is of the essence and that any failure of the **Engineer** to complete the Services of this Contract within the agreed Project Schedule shall constitute material breach of this Contract. The **Engineer** shall be fully responsible for its delays or for failures to use diligent effort in accordance with the terms of this Contract. Where damage is caused to the **City** due to the **Engineer's** failure to perform in these circumstances, the **City** may withhold, to the extent of such damage, **Engineer's** payments hereunder without waiver of any of **City's** additional legal rights or remedies. The **Engineer** shall not be responsible for delays associated with review periods by the **City** in excess of the agreed Project Schedule.
14. **Termination of Contract.** It is agreed that the **City** or the **Engineer** may cancel or terminate this Contract for convenience upon fifteen (15) days written notice to the other. Immediately upon receipt of notice of such cancellation from either party to the other, all Services being performed under this Contract shall immediately cease. Pending final determination at the end of such fifteen-day period, the **Engineer** shall be compensated on the basis of the percentage of Services provided prior to the receipt of notice of such termination and indicated in the final Design Progress Report submitted by the **Engineer** and approved by the **City**.
15. **Personnel Qualifications.** **Engineer** warrants to the **City** that all Services provided by **Engineer** in the performance of this Contract shall be provided by personnel who are appropriately licensed or certified as required by law, and who are competent and qualified in their respective trades or professions.
16. **Quality Control.** The **Engineer** agrees to maintain written quality control procedures. The **Engineer** further agrees to follow those procedures to the extent that, in the **Engineer's** judgment, the procedures are appropriate under the circumstances.
17. **Ownership.** All **Engineer's** designs and work product under this Contract, including but not limited to tracings, drawings, electronic or magnetic media and/or computer disks, estimates, specifications, investigations, studies and other documents, completed or partially completed, shall be the property of the **City** to be used as **City** desires, without restriction; and **Engineer** specifically waives and releases any proprietary rights or ownership claims therein and is relieved of liability connected with any future use by **City**. Copies may be retained by **Engineer**. **Engineer** shall be liable to **City** for any loss or damage to such documents while they are in the possession of or while being worked upon by the **Engineer** or anyone connected with the **Engineer**, including agents, employees, consultants or subcontractors. All documents so lost or damaged while they are in the possession of or while being worked upon by the **Engineer** shall be replaced or restored by **Engineer** without cost to the **City**.

18. **Project Records and Right to Audit.** The **Engineer** shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years following the Project completion, with full access allowed to authorized representatives of the **City** upon request for purposes of evaluating compliance with provisions of this Contract. Should the **City Engineer** determine it necessary, **Engineer** shall make all its records and books related to this Contract available to **City** for inspection and auditing purposes.
19. **Non-Discrimination.** As a condition of this Contract, the **Engineer** shall take all necessary action to ensure that, in connection with any work under this Contract it shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical impairment unrelated to experience, qualifications or job performance, either directly, indirectly or through contractual or other arrangements.
20. **Gratuities.** City of Coppell policy mandates that employees shall never, under any circumstances, seek or accept, directly or indirectly from any individual doing or seeking to do business with the City of Coppell, loans, services, payments, entertainment, trips, money in any amount, or gifts of any kind.
21. **No Waiver.** No action or failure to act on the part of either Party at any time to exercise any rights or remedies pursuant to this Contract shall be a waiver on the part of that Party of any of its rights or remedies at law or contract.
22. **Compliance with Laws.** The **Engineer** shall comply with all Federal, State and local laws, statutes, City Ordinances, rules and regulations, and the orders and decrees of any courts, or administrative bodies or tribunal in any matter affecting the performance of this Contract, including without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, **Engineer** shall furnish the **City** with satisfactory proof of compliance therewith.
23. **Severability.** In case one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
24. **Venue.** With respect to any and all litigation or claims, the laws of the State of Texas shall apply and venue shall reside in Dallas County.
25. **Prior Negotiations.** This Contract supersedes any and all prior understandings and agreement by and between the Parties with respect to the terms of this Contract and the negotiations preceding execution of this Contract.

26. **Contacts.** The **Engineer** shall direct all inquiries from any third party regarding information relating to this Contract to the City Engineer.

27. **Notification.** All notices to either Party by the other required under this Contract shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such Party at the following respective addresses:

City: City of Coppell, Texas

Engineer: J. Volk Consulting, Inc.
Matt Atkins, P.E.
830 Central Parkway East, Suite 300
Plano , TX 75074

IN WITNESS WHEREOF, the City of Coppell, Texas and the **Engineer** has caused these presents to be executed by duly authorized representatives on the day and year set forth above.

THE CITY OF COPPELL
BY:

Mayor

Date: _____

ATTEST:

ENGINEER: J. Volk Consulting, Inc
BY:

Matt Atkins, P.E.
Name & Title

Date: _____

ATTEST:

(CORPORATE SEAL)

ATTACHMENT "A" BASIC SERVICES

Task 1 – General Requirements

ENGINEER shall perform all general administrative duties associate with the project, including progress monitoring, scheduling, general correspondence, office administration and invoicing. These duties include maintaining day to day contact and liaison with the OWNER, ensuring the needs of the OWNER are met in a timely manner and ensuring that the work is executed in accordance with the work plan, budget and schedule.

ENGINEER will attend one (1) Project Kickoff Meeting and will attend up to six (6) Project Progress Meetings during the design phase of the project.

ENGINEER will prepare notes, minutes, memorandums and reports and provide copies of these documents as required by the OWNER as required for completion of tasks outlined this Scope of Work.

Limits of Project

The general limits of this project can be defined as follows:

The project consists of providing construction documents for the reconstruction and pavement repair of approximately 10,500 linear feet of Parkway Boulevard from Denton Tap Road to MacArthur Boulevard.

Task 2 – Survey

ENGINEER will provide services of a State of Texas Registered Professional Land Surveyor to provide boundary, right-of-way, and topography survey of Parkway Blvd. for the areas to be reconstructed (Heartz to Lodge), for the design of road repair, pavement, sidewalk, and utility reconstruction. Schematic bike lane design from MacArhur Blvd. to Mustang at Coppell High School will be off of arials. Scope of Work includes the following:

1. Coordination with the City of Coppell to provide survey notification and/or right-of-entry letters to adjacent property owners.
2. Horizontal and vertical survey control will be based on the City of Coppell Geodetic Control Network.
3. As a minimum, provide a temporary benchmark every 1,000 feet. Temporary benchmarks will not be placed on curbs, sidewalks, or in pavements subject to reconstruction.

4. Research Dallas County Appraisal District records for property owner names and property addresses.
5. Research Deed Records of Dallas County, Texas, for right-of-way lines, sidewalk easements along Parkway Blvd., and adjacent lot boundary or parcel boundary information.
6. Locate and measure property boundary monuments to verify the right-of-way location.
7. The topography survey will include the entire street right-of-way width. Cross sections will be measured every 50 feet from right-of-way line to right-of-way line, including all grade breaks and visible improvements inside the right-of-way and a minimum of 10 feet outside of the right-of-way.
8. The topography survey will extend 100 feet in all directions at every street intersection and at every alley intersection.
9. The topography survey will extend to either the front porch or finished floor elevations of the houses fronting the project streets. Obtain sufficient field information needed for the design of new sidewalks for compliance with the American Disabilities Act.
10. Map the location of improvements including, but not limited to the following:
 - a. Curbs, curb gutters, sidewalks, driveways, driveway approaches, and pavements
 - b. Esplanades or medians
 - c. Curb inlets and/or storm drains with flowline elevations
 - d. Storm drain manholes with flowline elevations and pipe sizes
 - e. Water meters and water valves. Provide top of nut elevations of water valves.
 - f. Fire hydrants
 - g. Wastewater manholes with flowline elevations and pipe sizes
 - h. Wastewater clean outs
 - i. Irrigation control valves
 - j. Gas meters and valves
 - k. Light poles, power poles, and down guy wires
 - l. Electric transformers and boxes
 - m. Telephone pedestals and boxes
 - n. Traffic signal control boxes
 - o. Traffic signs and utility signs
 - p. Mailboxes
 - q. Privacy walls and retaining walls with height and type of material identified
 - r. Fences with height and type of material identified
 - s. Trees with their sizes and types identified
 - t. Shrubs and landscape areas

11. Submit underground utility lines location request to Texas 811. Map the locations of paint marks and/or pin flags left by utility locators.

EXCLUDED FROM THIS SCOPE

1. Subsurface utility engineering level “A” and level “B” investigation.
2. Subdivision platting.
3. Preparation of parcel plat with metes and bounds description for new easement exhibits.
4. Construction staking.
5. As-Built Survey

Task 3 – Detailed Design

ENGINEER will prepare detailed design drawings, specifications and bid documents for the repair and reconstruction of road pavement, sidewalk, and water, sewer and storm sewer at Parkway Blvd., from Denton Tap Road to MacArthur Blvd., for the design. Schematic Designs for bike lanes will also be prepared. Scope of Work includes the following:

1. Preparation of detailed plans and specifications, incorporating the OWNERS most current design standards and details. Design plans will be prepared using AutoCadd Version 2010. Digital files of all design plans will be delivered to the OWNER at the completion of the project.
2. Plan reviews will be conducted at the 60%, 90% and 100% design stages. Comments from OWNER will be addressed and incorporated into each subsequent review set and into the final signed and sealed bid documents.
3. Each set for OWNER review will be submitted in hardcopy format. Review plans and specifications will be bound. Four (4) complete hardcopies of each review set comprised of two (2) full size 22 x 34 drawings and two (2) half size 11 x 17 drawings and two (2) sets of specifications including bid documents, will be delivered to the OWNER. One electronic copy of the complete review submittal set including drawings and bid documents in a *.PDF format shall be delivered to the OWNER. A single copy of electronic CADD drawing files formatted in AutoCadd

Version 2010 shall be delivered with each progress review submittal at OWNERS request.

4. Design shall include the following:
 - a. Pavement removal and reconstruction within the limits of the project. Horizontal, vertical profile and cross sections at 50 ft. intervals, and all driveway, intersections, and alley crossings that do not fall at the 50 ft. interval location.
 - b. Grading plans shall include the design of retaining walls as necessary to achieve the proposed grades within the limits of the project.
 - c. Water pipeline removal and reconstruction including service connections up including replacement of meter can and setter, hydrants, flushing connections, etc., within the limits of the project. Meter replacement will be shown at locations determined by the OWNER and meters shall be specified to be provided by OWNER and installed by the contractor.
 - d. Sanitary sewer pipeline removal and reconstruction including all manholes, lateral connections and service connections up to the right-of-way and within the limits of the project.
 - e. Removal and replacement of sidewalks and design of additional sidewalks as agreed upon by the OWNER and ENGINEER, within the limits of the project.
 - f. Removal and replacement of drive approached and drives up to the right-of-way or to a point as determined by the ENGINEER and approved by the OWNER.
 - g. On and off-site drainage analysis and evaluation of existing storm water conveyance capacity, both surface and storm sewer, for each roadway segment included in this scope of work.
 - h. Removal and replacement of storm sewer system and extension/expansion of the storm sewer system within the limits of the project, as agreed upon by OWNER and ENGINEER.
 - i. Signage and striping plan.
 - j. Preparation of traffic control notes and specifications.
5. ENGINEER shall deliver four (4) sets of bidding documents to the OWNER that consist of two (2) full size 22 x 34 drawings and two (2) half size 11 x 17 drawings and four (4) sets of specifications that include standard bid tab, bid forms, etc., and technical specifications. A single copy of electronic CADD drawing files formatted in AutoCadd Version 2010 shall be delivered with the bid document submittal at OWNERS request.

Task 4 – Bidding Assistance

ENGINEER shall assist the OWNER during the construction phase and provide the following services:

1. Attend one (1) pre-bid meetings one meeting.
2. Respond in writing to all Contractor submitted questions, requests for clarification, and requests for information (RFIs).
3. Publish all bid addenda including revisions to bid documents, specifications and engineering plans.
4. ENGINEER shall reproduce, and distribute bid documents to prospective bidders in either full size or half-size hardcopy format as requested by the prospective bidder. ENGINEER shall maintain a current list of plan holders during the bidding period.
5. Review all bid tabulations and assist the OWNER in recommendation of award to qualified contractor.
6. Combine all written addenda into a conformed set. Deliver fifteen (15) sets of plans and specifications to OWNER that consist of ten (10) full size 22 x 34 drawings and five (5) half size 11 x 17 drawings and fifteen (15) sets of specifications that include completed bid tab, bid forms, etc., and technical specifications. A single copy of electronic CADD drawing files in formatted in AutoCadd Version 2010 and a *.PDF file shall be delivered with conformed set submittal at OWNERS request.

Task 5 - Construction Phase Services

ENGINEER shall assist the OWNER during the construction phase and provide the following services:

1. Attend one (1) public review/informational meeting at OWNERS request.
2. Attend pre-construction coordination meeting.
3. Attend a minimum of (6) construction progress meetings to coordinate portions of the work related to the ENGINEER's design.
4. Attend up to six (6) site visits to observe construction of portions of the work related to the ENGINEER's design.
5. Perform review of submittals for work related to the ENGINEER's design.
6. Provide written responses to RFI submittals for work related to the ENGINEER's design.

7. Provide review and written responses for Contractor Change Order Requests and Requests for Information.
8. Attend one (1) walk-through to perform substantial completion review and generate a written punch list of items for Contractor to complete.
9. Attend one (1) final walk-through to review the completed punch list.
10. Provide full-size original mylars, one (1) black line hardcopy, electronic PDF and CADD formatted Record Documents that reflect the As-Built conditions. A single copy of electronic CADD drawing files formatted in AutoCadd Version 2010 shall be delivered with as-built submittal.