CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: December 27, 2017

ITEM: Motion – Approval of Professional Services Agreement – Fairmeadows Park Water Quality Improvements

FINANCIAL IMPACT: Expense of $9,900.00 to be paid from G/L account 660.000.000.5250.490. The total budget for the project is $60,000. Funding will be provided through a combination of funds from Polk County and the City. Through the assistance of Polk County Supervisor, Angela Connolly, Polk County will be providing $50,000 for the project split into two awards of $25,000 each. The funding is intended to sponsor community projects related to improving water quality near the Walnut Creek Watershed. The City will contribute $10,000 through the City's Stormwater User Fees.

BACKGROUND: The Council is asked to approve an agreement with LT Leon & Associates to provide design and construction services for water quality improvements at Fairmeadows Park. The improvements include construction of a bioswale to manage stormwater from the parking lot and soil quality restoration at the open playing fields. The project will also be incorporating native wetland plantings, compost grouting along the bank of the creek, and providing educational signage explaining the project.

The agreement with LT Leon & Associates is attached along with their proposal, scope of services, and schedule. The consultant was selected for this project due to their past experience on other City projects and experience in this type of work. The City retains professional consultants based on their past work experience, qualifications, and availability. City staff attempts to distribute professional services on an equitable basis to qualified firms maintaining local metropolitan area offices who have expressed interest in working for the City of West Des Moines.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the agreement with LT Leon Associates, Inc.

Lead Staff Member: David Sadler, Superintendent of Parks

STAFF REVIEWS

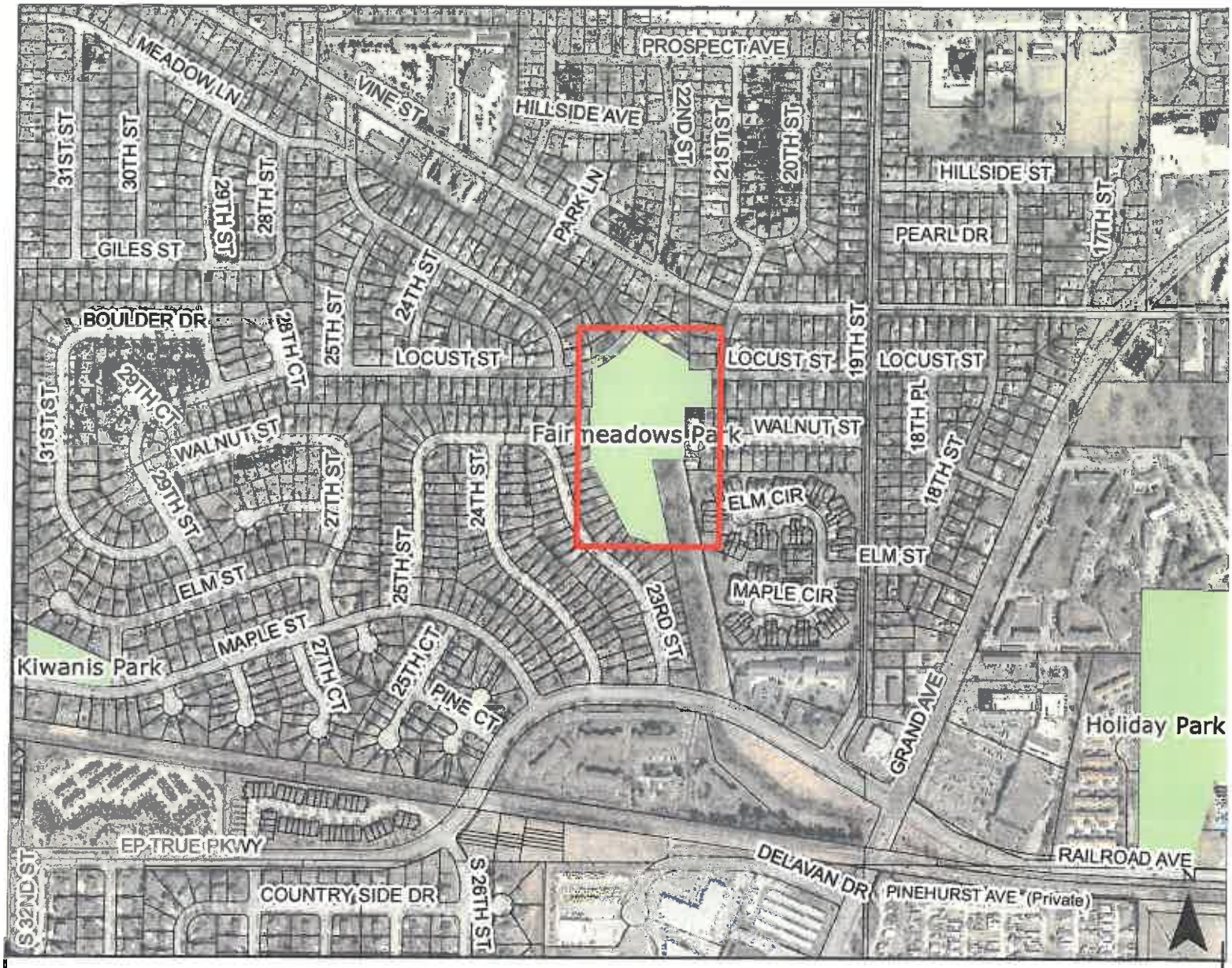
Department Director	Sally Ortgies, Director of Parks and Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

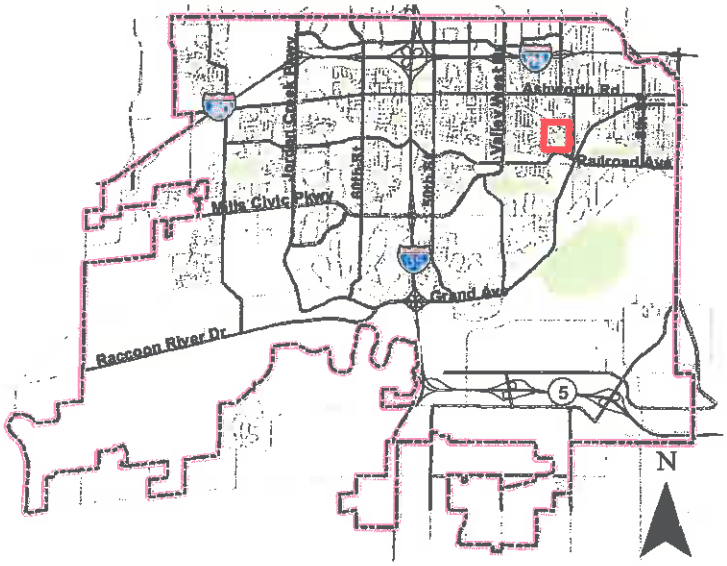
Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split



VICINITY MAP



LEGEND

- Project Location
- Park Boundary
- City Limit

THE CITY OF WEST DES MOINES

PROJECT:	PSA - FAIRMEADOWS PARK WATER QUALITY
LOCATION:	FAIRMEADOWS PARK - 543 22ND STREET
DRAWN BY: MAA	DATE: 12/19/17 PROJECT NO.: SHT. 1 of 1

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 27th day of December, 2017, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and LT Leon Associates, Inc. (Fed. I.D. #_____), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

1. SCOPE OF SERVICES

   Services provided under this Agreement for the FAIRMEADOWS PARK WATER QUALITY IMPROVEMENTS shall be as further described in ATTACHMENT A / EXHIBIT A – SCOPE OF SERVICES.

2. SCHEDULE

   The schedule of the professional services to be performed shall conform to the Schedule set forth in ATTACHMENT A. Any deviations from the Schedule shall be approved by the authorized City representative. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

3. COMPENSATION

   A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum, including any authorized reimbursable expenses, pursuant to the Compensation set forth in ATTACHMENT A / EXHIBIT A listed under Fee Summary.

      I. Basic Services of the Consultant $9,900

   B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.

   C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services to the satisfaction of the City by performing the professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

4. INSURANCE

   A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant' representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.

B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least $1,000,000 each personal injury accident and/or death; $1,000,000 general aggregate personal injury and/or death; and $1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least $1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of $1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.

E. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines
Attn: Ryan T. Jacobson, City Clerk
Address: 4200 Mills Civic Parkway
City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

Name: LT Leon Associates, Inc.
Attn: Luis Leon
Address: 500 East Locust Street, Suite 400
City, State: Des Moines, Iowa 50309

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.

B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall become the property of the City; a reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Consultant. All

drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project.

15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

17. SOLICITATION AND PERFORMANCE

A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.

B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

18. SUSPENSION AND TERMINATION OF AGREEMENT

A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.

B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.

C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.

D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.

E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any sub-consultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

CONSULTANT	CITY OF WEST DES MOINES
BY:_____	BY:_____ Ryan T. Jacobson, City Clerk

ATTACHMENT 1

SCOPE OF SERVICES

Included as Exhibit A – Scope of Services
provided by LT Leon Associated, Inc dated December 5, 2017

ATTACHMENT 2

PROJECT SCHEDULE

Task 1 – Topographic Survey	January, 2018
Task 2 – Soils Investigation	January, 2018
Task 3 – Preliminary Design	February, 2018
Task 4 – Final Design	March, 2018
Task 5 – Construction Administration	May - July, 2018

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Professional Services Agreement

Parties:
This agreement is made between City of West Des Moines (the "Client") and LT Leon Associates, Inc. (the "Engineer") for services regarding the following Project:

Fairmeadows Park Water Quality Improvements – West Des Moines, Iowa

Scope:
The Engineer agrees to perform the following professional services in connection with the Project:

See Exhibit 'A' – Scope of Services

Compensation:
The Client agrees to compensate the Engineer for services rendered under this agreement as follows:

Lump Sum Fee: Nine Thousand Nine Hundred Dollars ($9,900.00)

The attached Exhibit(s) and general conditions are a part of this agreement.

Offered By:
LT Leon Associates, Inc.

Luis T. Leon, P.E. (Date)
President

Accepted By:
City of West Des Moines

(Signature) (Date)

(Printed Name/Title)

Exhibit A – Scope of Services

December 5, 2017

Client:	City of West Des Moines ATTN: Kevin Conn Parks and Recreation Department PO Box 65320 West Des Moines, Iowa 50266-0320
Engineer:	LT Leon Associates, Inc. 500 East Locust Street Suite 400 Des Moines, Iowa 50309 Attn: Luis Leon
Project Name/Location:	Fairmeadows Park Water Quality Improvements West Des Moines, Iowa

Project Description:
The Fairmeadows Park Water Quality Improvements project at Fairmeadows Park includes a bioswale to manage stormwater from the parking lot and soil quality restoration at the open playing fields.

LT Leon will provide design services and construction administration for the bioswale and soil quality restoration.

Basic Services of the Engineer:
The Engineer shall consult on a regular basis with the Client to clarify and define the Client's requirements for the Project and review available data. The Client agrees to furnish to the Engineer full information with respect to the Client's requirements, including any special or extraordinary considerations for the Project or special services needed, and also to make available pertinent existing data. The Engineer shall provide the following basic services in regard to the Project:

TASK #1 – Topographic Survey

1. Complete a topographic survey for the bioswale area. The survey shall include the following within the proposed survey limits:
    a. Ground contours at one foot contours.
    b. Locations of known utilities.
    c. Existing paved surfaces and other key features and landscaping.

TASK #1 SUBTOTAL = $500

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TASK #2 – Soils Investigation

1. Conduct two soil test borings (10 feet deep), laboratory testing (includes 2 grain size analysis tests), and engineering analysis. A written report will be prepared. This will be completed by subconsultant Allender Butzke Engineers.

TASK #2 SUBTOTAL = $2,900

TASK #3 – Preliminary Design

1. Attend kick-off meeting with Client.
2. Prepare preliminary design drawings.

   Deliverables:

   - Plan Sheets – Site Layout, Utility, Grading, Erosion Control, Planting, and Construction Details. Provide in electronic AutoCAD and PDF format.
3. Planting materials, seed mixes, and locations for plantings will be provided by the Client.
4. Prepare draft quantity estimate and opinion of probable cost.
5. Prepare draft specifications. Client will provide standard specifications sections and template.
6. Coordinate with Client as necessary via phone and email.
7. Attend review meeting with Client.

TASK #3 SUBTOTAL = $3,000

TASK #4 – Final Design

1. Prepare final construction documents and specifications. Incorporate Client comments into final plans.

   Deliverables:

   - Specifications in WORD or PDF format.
   - Final quantity estimate and opinion of probable cost.
   - Construction Plan Sheets – Site Layout, Utility, Grading, Erosion Control, Planting, and Construction Details. Provide in electronic AutoCAD and PDF format.
2. Coordinate with Client as necessary via phone and email.

TASK #4 SUBTOTAL = $1,500

TASK #5 – Construction Administration

1. Assist Client with bidding process. Attend bid opening. Prepare bid tabulation.
2. Respond to contractor questions.
3. Prepare addendum, ASI, and RFI, and submittal review and responses.
4. Attend preconstruction meeting.
5. Attend up to three construction progress meetings as requested during construction.
6. Visit site up to five additional times to observe construction progress. Prepare observation reports.
7. Conduct site visit to develop punchlist items.
8. Conduct site visit to verify that punchlist items have been completed

TASK #5 SUBTOTAL = $2,000

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Fee Summary
The Client agrees to pay the Engineer the following NOT TO EXCEED FEE, based on the Engineer's 2017 Schedule of Fees:

ITEM	FEE
1. Topographic Survey	$ 500
2. Soils Investigation	$ 2,900
3. Preliminary Design	$ 3,000
4. Final Design	$ 1,500
5. Construction Administration	$ 2,000
TOTAL LUMP SUM FEE	**$ 9,900**

Project Schedule
The time of completion of the design and engineering services under this Agreement shall be as follows unless otherwise agreed upon by both parties in writing:

ITEM	# of Days from Notice to Proceed
1. Topographic Survey	15
2. Soils Investigation	30
3. Preliminary Design	45
4. Review Meeting	45
5. Final Design	90

Notes
1. Client shall provide Engineer with all relevant background data, including available survey data, existing permit requirements, geotechnical reports, and previous engineering plans and calculations for the project area.
2. Submittal, permit and review fees are not covered under this proposal.
3. LT Leon bills monthly. Payment is expected within 30 days of statement date.
4. In the event additional services beyond the aforementioned scope of services are requested by the Client, LT Leon will provide services on an hourly basis or as an additional stipulated lump sum.
5. Upon initiation of Additional Services requested by the Client, LT Leon may submit in writing to the Client, a Contract Amendment to be executed by both parties which defines the scope of Additional Services and the corresponding fees.

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2017 Schedule of Fees

Classification	Hourly Rate
Principal Engineer	$120
Project Engineer	$100
Engineer-in-Training	$85
Engineering Technician	$80
Administrative Assistant	$50

Reimbursable Expenses	Rate
Mileage	$0.535 per mile
Postage	1.15 x cost
Printing	1.15 x cost
Plotting – Bond	$0.30/sq.ft.
Photocopies	$0.05 each
Filing Fees, Permit Fees, etc.	1.15 x cost
Materials/Supplies	1.15 x cost

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GENERAL CONDITIONS

1. PARTIES AND SCOPE OF WORK

LT Leon Associates, Inc. (hereinafter referred to as "LT Leon") shall perform professional services as set forth in LT Leon's proposal, the Client's acceptance thereof and these General Conditions. Unless otherwise stated in writing, the Client assumes sole responsibility for determining whether the quantity and the nature of the professional services ordered by the Client is adequate and sufficient for the Client's intended purpose. The ordering of professional services from LT Leon shall constitute acceptance of the terms of LT Leon's proposal and these General Conditions.

2. SCHEDULING OF WORK

LT Leon will perform professional services with due and reasonable diligence consistent with sound professional practices. If LT Leon is required to delay commencement of professional services or if, upon embarking upon its professional services, LT Leon is required to stop or interrupt the progress of its professional services as a result of changes in the scope of the professional services requested by the Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of LT Leon, additional charges will be applicable and payable by Client.

3. ACCESS TO SITE

Client will arrange and provide such access to the site as is necessary for LT Leon to perform professional services. LT Leon shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its professional services or the use of its equipment; however, LT Leon has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires LT Leon to restore the site to its former condition, upon written request LT Leon will perform such additional professional services as is necessary to do so and Client agrees to pay LT Leon the cost thereof.

4. CLIENT'S DUTY TO NOTIFY

Client represents and warrants that Client has advised LT Leon of any known or suspected hazardous materials, utility lines and pollutants at any site at which LT Leon is to do professional services hereunder, and unless LT Leon has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save LT Leon harmless form all claims, suits, losses, costs and expenses, including reasonable attorney fees as a result of personal injury, death or property damage occurring with respect to LT Leon's performance of its professional services and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to LT Leon by Client.

5. STANDARD OF CARE

LT Leon's professional services will be performed in accordance with this agreement and with generally accepted principles and practices. In performing its professional services, LT Leon will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession.

6. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and LT Leon, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of LT Leon to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney fees and costs, and expert witness fees and costs, so that the total aggregate liability of LT Leon to the Client shall not exceed $50,000 or LT Leon's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. Client acknowledges that LT Leon is a corporation and agrees to make any claim arising out of or relating to the Project against LT Leon only and not against any of LT Leon's directors, officers, employees or agents.

LT LEON
ASSOCIATES-INC

7. PRICING ESTIMATES

LT Leon has no control over the costs of labor, materials, equipment, over contractors' methods of determining bid prices, or over competitive bidding, market or negotiation conditions. Accordingly, LT Leon cannot and does not warrant or represent that bids or negotiated prices will not vary from any established budgetary constraints. Client may perform its own cost analysis or retain its own cost consultant and shall be solely responsible for the accuracy and preparation of cost estimates at each appropriate state of the Project.

8. ADDITIONAL SERVICES

Client may request or it may become necessary for LT Leon to perform Additional Services in order to further the objectives of the Project. Notwithstanding any other description of Basic or Additional Services, any services which Client requests LT Leon to perform after final payment has been made to the contractor(s) or more than sixty (60) days after the Project has been certified to be substantially complete shall be considered Additional Services. Any modifications or changes requested by Client inconsistent with Client's prior approval(s) shall be considered Additional Services. Additional Services shall be billed at LT Leon's normal hourly rates and Client shall pay such charges above and beyond any charges for Basic Services set forth in the Proposal.

9. TERMINATION

This Agreement may be terminated, by either party, upon giving seven days prior written notice. In the event of termination, LT Leon shall be compensated by the Client for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services, records and reports as are necessary to place LT Leon's files in order and/or protect its professional reputation.

10. PAYMENT

Client shall be invoiced as professional services are completed and reported, at LT Leon's option, either monthly or at the end of the Project. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) days at the rate of eighteen (18) per cent per annum (or the maximum interest rate permitted under applicable law) until paid. Client agrees to pay LT Leon's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney fees. LT Leon shall not be bound by any provision or agreement requiring or provide for arbitration of disputes or controversies arising out of this Agreement and provision, wherein LT Leon waives any rights to a mechanics' lien, or any provision conditioning LT Leon's right to receive payment for its professional services upon payment to Client by any third party. These General Conditions are notice, where required, that LT Leon shall file a lien whenever necessary to collect past due amounts. Failure to make payment within thirty (30) days of invoice shall constitute a release of LT Leon from any and all claims which Client may have, either in tort or contract, and whether known or unknown at the time.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This Agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

12. INDEMNIFICATION

The Client shall indemnify and hold harmless LT Leon Associates, Inc. and all of its directors, officers, employees and agents from and against any and claims, damages, losses and expenses (including reasonable attorney fees) arising out of or resulting from the performance of professional services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except LT Leon) or anyone for whose acts any of them may be liable.