CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: September 3, 2019

ITEM: Motion – Approval of Professional Services Agreement – Amphitheater, Resident Construction Administrative Services

FINANCIAL IMPACT: Not-to-exceed expense of $104,000.00 to be paid from G/L account 500.000.000.5250.490. Funding will be covered out of available funds in the FY 19-20 CIP from the City Campus Amphitheater, (Project No. 0510 096 2017).

BACKGROUND: A resolution is included on the agenda for the construction of the Amphitheater on the City Campus located southeast of City Hall on the campus pond. The project consists of three (3) separate divisions, with Division 1 being constructed as an in-kind donation, and Division 2 & 3 constructed by a general contractor. Due to complexities of coordination for the different divisions, City staff is requesting on-site construction administration services to help manage the overall construction process, and the (3) different divisions through the completion of the project.

The agreement with Larson Engineering, Inc. is attached along with their proposal, scope of services, schedule and fees. Larson Engineering is the original consulting engineering on this project, and was selected for this project due to their past 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 Larson Engineering, Inc.

Lead Staff Member: David Sadler, Superintendent of Parks

STAFF REVIEWS

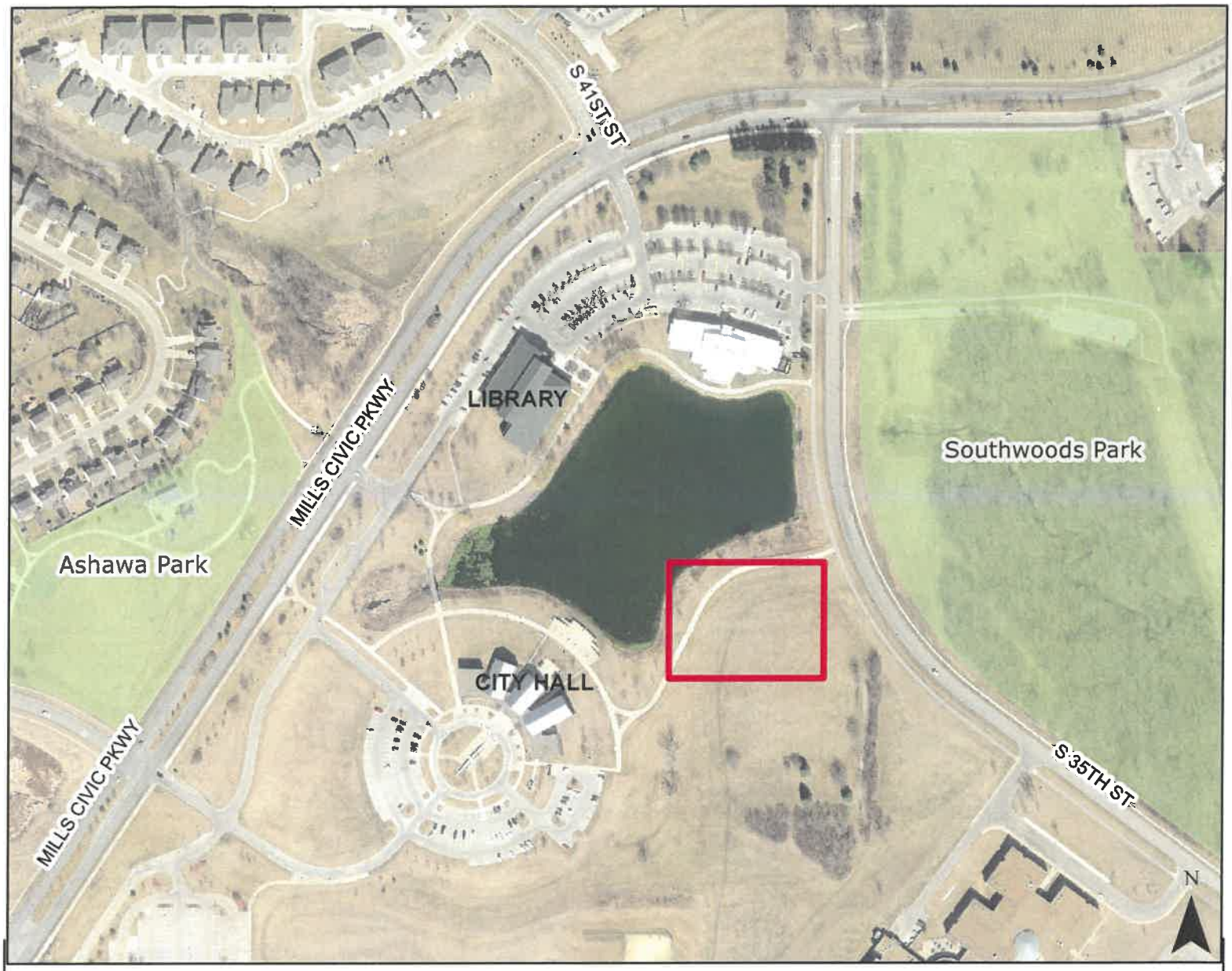
Department Director	Sally Ortgies, Director of Parks & Recreation	SO by DS
Appropriations/Finance	Tim Stiles, Finance Director	
Legal	Richard Scieszinski, City Attorney	
Agenda Acceptance		

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

THE CITY OF WEST DES MOINES

PROJECT:	**CITY CAMPUS AMPHITHEATER**		
LOCATION:	**4200 MILLS CIVIC PKWY**		
DRAWN BY: **MAA**	DATE: **7/30/2019**	PROJECT NO.: -	SHT. **1 of 1**

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 3rd day of September, 2019, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Larson Engineering, 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 **AMPHITHEATER, RESIDENT CONSTRUCTION ADMINISTRATIVE SERVICES**, shall be as further described in Attachment 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, pursuant to the Schedule of Fees set forth in Attachment A.

      I. Design Services Not-to-exceed $104,000.00

   B. The Consultant shall invoice the City monthly for services, 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: Larson Engineering, Inc.
Attn: Michael A. Murphy, Regional Mgr.
Address: 1001 Office Park Road, Suite 120
City, State: West Des Moines, IA 50265-2509

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 A

SCOPE OF SERVICES

Outlined within 'Scope of Work' on attached proposal dated July 29, 2019

PROJECT SCHEDULE

Outlined within 'Schedule' on attached proposal dated July 29, 2019

SCHEDULE OF FEES

Outlined within 'Fees' on attached proposal dated July 29, 2019

Larson Engineering, Inc.
1001 Office Park Road, Suite 120
West Des Moines, IA 50265-2509
515.225.4377
www.larsonengr.com

PROPOSAL

Larson

July 29, 2019

Matt Carlile
Confluence
525 17th Street
Des Moines, IA 50309

PHONE: (515) 288-4875

RE: On-Site Construction Administration Services
West Des Moines City Hall Amphitheater
West Des Moines, IA

Dear Mr. Carlile,

In response to your request, Larson Engineering, Inc. (LEI) is pleased to submit the following proposal to provide construction administration services for the proposed project.

PROJECT DESCRIPTION

The project consists of the construction of a new outdoor amphitheater located to the east of the existing West Des Moines City Hall. The City of West Des Moines has requested on-site construction administration services to manage the construction process through the completion of the project.

It is LEI's understanding that the project will be separated into three contracts. Contract #1 would be performed by the project donor and would include all site work. Contract #2 would include all of the work related to the stage, and Contract #3 would include all landscape and irrigation. The City has proposed a construction start date of October 1, 2019, and it is expected construction would run to the end of summer 2020, with a break in construction between the end of December and March 15 for the winter months.

SCOPE OF WORK

Based upon the approved construction documents provided by the client, LEI will provide the following services…

Construction Administration

- Provide on-site daily observation for 2-3 hours to document project progress and prepare daily observation reports for sharing with the Owner.
- Review material submittals and shop drawings.
- Manage/coordinate testing services as needed.
- Coordination between contractors and architect, electrical, and landscape architecture consultants.

- Direct contractor Requests for Information (RFI's) to appropriate consultant and provide response to contractors.
- Issue Proposal Requests and Change Orders as needed.
- Verify contractor payment requests.
- Conduct the substantial completion and final inspections, and create punchlists.
- Obtain signed and dated warranties from the Contractor(s).

BASIS OF PROPOSAL

This proposal is based upon an email from Matt Carlile (Confluence) received July 24, 2019 requesting on-site construction administration services.

CLIENT RESPONSIBILITY

Prior to or shortly after commencing the design, we request the following information:

- A minimum of one printed, full-size, all-inclusive drawing set at each project milestone.
- Clear indication of changes to architectural drawings during Construction Documents phase.
- A proposed schedule and written notification of any changes to schedule.
- Electronic files of plan drawings, for use as backgrounds, complete with all required reference files, attachments.
- A geotechnical engineering report of the soils in the project area.
- Copies of all construction budgets as soon as they are available.

DUE DILIGENCE

It is understood that due diligence has been performed by others, and that issues of jurisdiction, land use and zoning (including availability of utilities, traffic access, and drainage restrictions, wetlands, air space, Phase I and follow-up environmental studies, and fees for development, licensing, and permitting) have been resolved. Determination of whether wetlands or flood hazard areas exist, and incorporation of such facts into the initial planning is assumed to have been satisfactorily completed at this time, with no anticipated impact on the project.

SCHEDULE

Work to follow a mutually agreed upon schedule at project commencement. LEI's work shall not begin until LEI has received a signed Proposal from Client, and all pertinent information for design.

FEES

Time and Materials

We propose to perform the work described herein at the hourly rates as follows in accordance with our standard Terms and Conditions, with a fee not-to-exceed one hundred four thousand dollars ($104,000.00).

Principal	$255.00/hr	Design Engineer II	$130.00/hr
Project Manager	$160.00/hr	Design Engineer I	$115.00/hr
Project Engineer	$155.00/hr	BIM/CAD Designer	$108.00/hr
Design Engineer III	$140.00/hr	Clerical/Admin	$68.00/hr

ADDITIONAL SERVICES beyond the scope of this agreement including but not limited to:

- Additional Engineering and Drafting due to redesign/relocation of the proposed Amphitheater, parking or grading layouts after the initial layout is prepared as requested by the Client.
- Wetlands Delineation.
- Floodplain/floodway encroachment studies and design.
- Traffic studies.
- Site Development, Construction Documents or Construction meetings beyond those described in the scope of work.
- Additional work due to the introduction of fast-track scheduling or for multiple bid packages.
- Lift stations for sanitary or storm sewage.
- Construction layout/staking.
- As-Built or Record Drawings.
- Special Inspections.
- Utility and roadway plan and profile drawings.
- Roadway turn lane design.
- Layout for additional utilities such as gas, electrical, telephone, cable, etc.
- Irrigation system design or relocation.
- Hazardous materials.

Additional services shall be charged at hourly rates as follows, only after written authorization to proceed is received from Client.

Principal	$240.00/hr	Graduate Engineer	$130.00/hr
Project Manager	$155.00/hr	CADD Tech	$105.00/hr
Registered Engineer	$150.00/hr	Clerical	$65.00/hr
Design Engineer	$130.00/hr	Technician/Intern	$65.00/hr

This Proposal shall remain in effect for 30 days of the date hereof.

TERMS AND CONDITIONS

1. **Invoicing:** Invoices shall be rendered monthly in proportion to services performed.
2. **Payment:** Invoices are due and payable 15 days after Client receives payment from the owner but no later than 30 days after receipt of LEI's invoice. Client shall notify LEI in writing when payment of LEI invoices will exceed 60 days.
3. **Acceptance of Invoice:** Client shall review LEI invoices promptly. Client shall notify LEI of any disputes with invoice within10 business days of receipt of invoice. If Client fails to formally notify LEI of any disputes with any part of any invoice within 10 business days of receipt of invoice, entire invoice shall be deemed accepted. Disputes involving only portions of an invoice shall not relieve the Client of responsibility for prompt payment of any portion of same invoice that is not disputed.
4. **Interest and Unpaid Balance Due:** If any payment is not paid by Client when due, the unpaid balance shall accrue interest at one and one-half percent (1.5%) per month until

paid. (Annual effective rate = 18%). In the event the default interest rate exceeds the maximum rate of interest allowable by law, the balance owing shall accrue interest until paid, at the maximum allowable interest rate.

5. **Attorney Fees and Collection Costs:** In the event it becomes necessary for LEI to refer an unpaid account to any attorney or collection agency, then in addition to any amount due to LEI, LEI will be entitled to recover its costs of collection, which includes reasonable attorney fees. In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other related expenses.

6. **Existence of Prime Contract:** Where Client is not also Owner, Client warrants that Client and Owner have entered into, or intend to enter into, prior to commencement of project, a contractual agreement (Prime Contract) for services including services provided under this Agreement. Client shall identify to LEI the name(s) of the Owner at the time of acceptance of this Proposal. Owner, as defined for the purposes of this Proposal, is one who has improved, intends to improve or has knowledge of proposed improvements to any tract or lot of land in which he/she has such an estate, right or interest.

7. **Document Ownership:** All original calculations, sketches, building models and/or construction documents (Documents) prepared by LEI shall remain the property of LEI unless other terms in writing are agreed upon by both parties. Any copies of Documents held by Client shall be considered instruments of professional services. Client shall not reuse or make any modifications to Documents without the prior written authorization of LEI. Client agrees, to the fullest extent permitted by law, to indemnify and hold LEI harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of Documents by Client or any person or entity that acquires or obtains Documents from or through Client without the written authorization of LEI.

8. **Electronic Documents/Model Files Transfer**: Should Client require electronic drawing/model files be transferred to Owner, contractor and/or subcontractors for their use in or after construction, LEI will require an executed waiver of liability from recipient as well as a nominal transfer fee. Should Client establish a standard nominal transfer fee different from LEI's, LEI shall be notified of such at the time of execution of this Agreement.

9. **Information in a Timely Manner:** LEI reserves the right to withhold documents scheduled for bid/construction release if sufficient design information from Client, required for the production of accurate bid/construction documents, is not provided to LEI in a timely manner. LEI will not be responsible for coordination of information not provided to LEI in a timely manner.

10. **Information Provided by Others:** LEI shall indicate to Client the information needed for the rendering of services hereunder. Client shall provide to LEI such information as is necessary for LEI to perform the Scope of Work defined above. LEI shall be entitled to rely upon the accuracy and completeness of said information. As such, Client agrees, to the fullest extent permitted by law, to indemnify and hold LEI harmless from any claim, liability or cost (including reasonable attorneys' fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in the information provided by Client to LEI.

11. **Building Information Modeling (BIM):** If Scope of Work includes BIM, Client shall be responsible for coordination of the BIM models from each Architect/Engineer (A/E) design team discipline and shall provide LEI with background information necessary to develop LEI's portion of the BIM model prior to LEI's commencement of the model. Furthermore, Client shall obtain and provide to LEI, for our records, evidence of an executed agreement between Client and any other party outside of the Project's A/E design team that has been provided the BIM model. Such agreement shall include language indemnifying LEI from any and all claims, suits, liability, demands or costs arising out of or resulting from the use of said model (for purposes including quantity take-offs).

12. **Record Documents:** Client shall provide LEI with a complete set of construction documents (drawings and specifications) at time of bidding/pricing and all subsequent addenda as soon as they are distributed to contractors.

13. **Consequential Damages:** Notwithstanding any other provision of this Agreement, neither Client nor LEI shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by Client or LEI, their employees, agents, sub-consultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

14. **Acceptance By Performance:** The terms of this Proposal shall be considered accepted and shall be enforceable if any Work is provided by LEI upon the verbal or written direction of Client and no other form of agreement has been formally accepted by both parties to this Agreement.

15. **Agreements:** This Proposal represents the entire Agreement between Client and LEI, and supersedes all previous oral and written agreements on the Project. LEI shall not be held to the terms of any other agreements or contracts, unless expressly made part of this Agreement and amended in conformance with the Terms and Conditions of this Proposal. Furthermore, changes to this Agreement are not considered binding unless received in writing and accepted in writing by both original signatories of this Proposal.

16. **Assignments:** Client hereby warrants and represents that they will not transfer or assign this Agreement to any third party, directly, indirectly, by subrogation or operation of law without written consent from LEI. Furthermore, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either LEI or Client. LEI's services under this Agreement are being performed solely for the benefit of Client. No third party is intended as a beneficiary of this Agreement or of the services being performed by LEI pursuant to this Agreement.

17. **Third Party Beneficiaries:** The parties to this Agreement understand and expressly agree that there are no direct or intended third party beneficiaries to this Agreement. The parties further understand and expressly agree that nothing contained in this Agreement is intended to create nor shall create a contractual relationship with or cause of action in favor of a third party against LEI.

18. **Site Visitations:** If site visits are performed under this Agreement, then said visits are for the purpose of determining whether the construction work associated with this Agreement is in accordance with the Contract Documents. These site visits shall not constitute responsibility on the part of LEI for construction supervision nor construction means and methods nor devising, implementing or enforcing any safety precautions, and shall not relieve the Contractor and/or any subcontractors of any responsibilities in conjunction with their work, unless specifically stated within the Scope of Work of this

Proposal. Unless specifically stated otherwise, site visits shall not be construed as a special inspection as defined by the International Building Code (IBC).

19. **Project Delay:** If the services covered by this Agreement have not been completed within 12 months of the date hereof through no fault of LEI, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted. Should Project become inactive or LEI be instructed to cease production on our portion of the work for a period longer than six months, a project restart fee shall be negotiated. Should Project be delayed, LEI shall be compensated for the services, including time and expenses accrued up to the point that LEI is notified of Project delay.

20. **Project Cancelation:** Should Project be canceled, LEI shall be compensated for the services, including time and expenses accrued up to the point that LEI is notified of Project cancelation. Accumulated hours up to that point will be billed at hourly rates as outlined above. Upon final payment received by LEI from Client, this Agreement will be considered terminated.

21. **Termination:** This Agreement may be terminated by either party upon not less than seven days written notice should either party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. In the event of termination for convenience by Client, LEI shall be entitled to recover all reasonable costs and expenses incurred up to the date of termination, plus all costs incurred to assemble and close project files and documents.

22. **Liability:** LEI's liability to Client for services performed under this Agreement shall be limited to the amount of the Fee received under this Agreement.

ACCEPTANCE

Please sign and return one copy of this proposal to acknowledge your understanding of our Scope of Services, Fees, and Terms and Conditions and to authorize us to proceed.

We appreciate the opportunity to have prepared this proposal and look forward to working with you on the project. If you have any questions concerning this proposal or our services, please call.

Sincerely,
Larson Engineering, Inc.

Michael A. Murphy, P.E., LEED AP
Regional Manager
mmurphy@larsonengr.com

We (Client) accept the terms of this Proposal

Signature _____

Name (Print) _____

Title _____ Date _____

Client Company _____

Billing Address _____

_____