

STATE OF TEXAS§

COUNTY OF BRAZOS§

ENGINEERING AGREEMENT

This is an Agreement entered into by and between the City of Bryan, Texas, A Municipal Corporation, (hereinafter called "OWNER") acting herein by _____ and THE C.T. BRANNON CORPORATION a corporation of Tyler, Smith County, Texas (hereinafter called the "ENGINEER") acting herein by and through Calvin T. Brannon, its President.

SECTION 1: PROJECT DEFINITION AND SCOPE OF SERVICES:

- 1.01 The Owner's project is generally identified as Renovations to Swimming Pool – Bryan Aquatic Center Pools (2015-2016), (hereinafter called "Project").
- 1.02 The Owner employs the Engineer and Engineer agrees to perform the professional services as shown in the attached exhibit (Attachment 1) entitled Proposal.
- 1.03 Engineer may furnish services in addition to the services listed above in Section 1.02, if authorized in writing by Owner. Owner shall not be responsible for Engineering fees and costs for services in addition to the services listed in Section 1.02 unless authorized in writing by Owner. Additional Services may include:
 - A. Significant changes in the scope, size, complexity, or character of construction of the Project requested in writing by Owner.
 - B. Revisions, elected by the Owner after giving previous approval of studies, reports, design documents, drawings or specifications. No additional fees shall be owed the Engineer by Owner if the revision(s):
 - 1) is required by regulating authorities or to bring the design into compliance with applicable codes or ordinances, or
 - 2) is required as a result of the Engineer's error or omission.
 - C. Additional services in connection with the Project not otherwise provided for in the above scope of services for this agreement.

SECTION 2: FEES AND EXPENSES:

- 2.01 Basis of Payment – Fixed Fee
Owner shall pay Engineer for the engineering services described in Attachment I, Scope of Services, a fixed fee in the amount not to exceed:

FORTY EIGHT THOUSAND AND NO/100 DOLLARS (\$48,000.00)

which includes all labor, travel expenses, supervision, reporting and document production.

- 2.02 Additional Services:

For additional services, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees multiplied by their standard hourly rates for each applicable labor designation; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment II.

SECTION 3: PAYMENT PROCEDURES:

- 3.01 Engineer shall submit periodic detailed invoices to Owner at completion of the following phases:
- a. Schematic Drawings
 - b. Design Development Drawings
 - c. Construction Documents
- And not to exceed once per month during construction phase based on the prorated portion of work completed on the contract by the contractor.
- 3.02 Payments shall be made payable to The C. T. Brannon Corporation and remitted to the mailing address: P.O. Box 7487, Tyler, Texas 75711, or physical address: 1321 S. Broadway Ave., Tyler, Texas 75701.
- 3.03 Engineer's invoice is due and payable within thirty (30) days of receipt.
- 3.04 Engineer reserves the right to stop work on the Project if payment of an invoice is past due.
- 3.05 Payment of an invoice shall not be withheld from Engineer for Engineering fees and expenses based on the Contractor's failure to perform; nor shall Engineer's fees be reduced in the event the amounts owing under any Construction Contract are reduced by change order, settlement, or litigation.
- 3.06 Payment for services rendered by Engineer is not contingent on receipt by Owner of any project financing, settlement, capitalization, grant awards or other funding.

SECTION 4: TERMINATION:

- 4.01 This Agreement may be terminated by either party with or without cause at any time by giving the other party written notice of termination. If terminated by the Owner without cause the Engineer shall be entitled to invoice and receive payment for all services and reimbursable expenses incurred through the effective date of the termination. If terminated by the Engineer without cause the Engineer shall not be liable to Owner for any damages caused by termination.

SECTION 5: ADDITIONAL OBLIGATIONS OF ENGINEER:

- 5.01 The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be of the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties or guarantees, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- 5.02 Subject to the foregoing standard of care, Engineer and its' consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

SECTION 6: ADDITIONAL OBLIGATIONS OF OWNER:

- 6.01 Owner shall furnish, at the Owner's expense, all information, reports, data, surveys and instructions available to Owner and required by Engineer to perform this Agreement.

The Engineer may use such information, requirements, reports, data, surveys and instructions in performing his services and is entitled to rely upon the accuracy and completeness thereof.

- 6.02 Owner shall make all necessary provisions for Engineer to lawfully enter upon public lands required for Engineer to perform his work under this Agreement. During design, Owner shall furnish at Owner's expense a representative to accompany the Engineer while on-site and such person shall have the means to unlock all doors and gates to afford access. Owner's representative shall have responsibility for securing the site(s) after the Engineer has completed his review.

SECTION 7: LIMITATIONS:

- 7.01 All documents, including original drawings, Engineer's opinion of probable cost, specifications, field notes, and data are and remain the property of the Engineer as instruments of service. These documents were prepared and are to be only used for the repair of the Bryan Aquatic Center.
- 7.02 The Engineer's opinion of probable total project cost is based on the Engineer's experience and expertise. Expertise notwithstanding, the Engineer does not guarantee the accuracy of such Engineer's opinion of probable cost as compared to the successful contractor's bid, or the final construction cost. Owner acknowledges that Engineer has no control over the cost of labor and materials, or other competitive bidding and market conditions.
- 7.03 If Engineer or any other party encounters a Hazardous Environmental Condition, which includes the presence of asbestos, PCBs, petroleum, hazardous substances or wastes as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) abates, remediates, or removes the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 7.04 The Project is a renovation of previous work and therefore consists of a high degree of unknown or uncertain conditions largely undetectable until construction and demolition can be commenced. The Owner acknowledges that the risk of unknown conditions brings with it an inherent risk of higher expense for the work. The Engineer is not required to uncover, expose, test, excavate, or otherwise determine these unknown conditions for the purposes of preparing construction documents but shall bring such conditions to the attention of the Owner when uncovered and provide an opinion as to the impact such discovery has on the Project.

SECTION 8: SUCCESSORS, ASSIGNS, AND BENEFICIARIES:

- 8.01 This Agreement shall not be assigned by or transferred by Owner or Engineer without the written consent of the other.
- 8.02 Nothing contained in this Agreement shall be construed to create, impose, or give rise to any duty or personal liability owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them, or any office or agent of any public body which may be a party hereto.
- 8.03 Nothing contained in this Agreement shall be construed to create a contractual relationship with or cause of action in favor of, a third party, against either the Owner or the Engineer. The Engineer's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder. The Owner agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

- 8.04 To the extent allowed by law, all reports, information, data, and drawings prepared or assembled by Engineer under this Agreement shall be kept confidential by Engineer, and shall not be made available to any third party without the prior written approval of the Owner.
- 8.05 Public Records. Construction documents prepared by Engineer can contain proprietary information, the release of which offers an unfair advantage to competitors of the Engineer, and as such would be confidential under the Texas Public Information Act ("Act"). Construction documents shall not be released except with the permission of the Engineer, in accordance with the Act, or for purposes of procuring bids for the project, permitting/review by the Owner, or operation and maintenance of the facility. The Owner agrees to treat construction documents as confidential and provide Engineer with an opportunity to argue against release in accordance with the Act.

SECTION 9: GENERAL TERMS:

- 9.01 This agreement is to be governed by the laws of the State of Texas. Venue in the event of any legal proceeding arising under this agreement is agreed to be a court of competent jurisdiction in Brazos County, Texas.
- 9.02 All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Owner and the Engineer survive the completion of the services hereunder and the termination of this Agreement.
- 9.03 This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument executed by Owner and Engineer.
- 9.04 Any provision of this Agreement later held to be legally unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

Attachments: Attachment I, Engineer's Proposal
Attachment II, Engineer's Standard Hourly Rates

IN TESTIMONY WHEREOF, the parties have affixed their hands and seal this, the ____ day of _____, 2015, A.D.

FOR The City of Bryan, Texas, OWNER.

By: _____

Date: _____

Title: _____

FOR THE C.T. BRANNON CORPORATION

By: 

Date: 10/29/15

Title: Calvin T. Brannon, President

ATTACHMENT I - PROPOSAL

20 October 2015

Mr. Darrell Lovelette
City of Bryan Parks & Recreation
Sent Via E-Mail

Re: Bryan Aquatic Center, 2015/2016 Renovations

Dear Mr. Lovelette,

Please accept this proposal for certain aquatic engineering services related to the renovation of the Bryan Aquatic Center. As you summarized in our recent meeting, our proposed scope of services would include the following:

- **Initial meeting:** Meet with you to determine the requirements of the project and information the city may have at its disposal. This meeting has taken place.
- **Schematic Design Phase:**
 - Prepare initial plans showing background conditions to scale
 - Graphically represent the scope of the work to be performed in general terms and identifying the location of each element of improvement.
 - Provide preliminary outline specifications for the work to clearly identify all the various elements for you so that we do not inadvertently overlook work intended to be done.
- **Design Development Phase**
 - Based on the approved schematic designs, prepare in more detail plans for the project showing equipment and pipe sizes, flow rates, and other design criteria.
 - Identify problems to be expected in the construction of the improvements and recommend solutions to those problems.
 - Identify other work that may need to be included in the work scope based on more thorough examinations of the present facilities.
 - Identify manufacturers, model numbers, sizes, and other equipment schedules.
 - We will identify accessibility issues for the disabled and make recommendations concerning these issues. A design fee to address any ADA issues will be presented to the City of Bryan for their consideration so renovations can be completed to current standards.
- **Construction Documents Phase**
 - Based on the approved design development drawings, prepare final construction drawings showing in sufficient detail the work and materials necessary to bid and construct the improvements including demolition, civil, structural, mechanical, plumbing, and electrical components of the work.
 - Prepare project specifications for the work.
 - Prepare bid documents including use of local 'boiler plate' promulgated by the City of Bryan including general and special conditions, forms of bonding and insurance, and other forms for procuring competitive bids.

- **Construction Phase**

- We will assist the city in obtaining competitive bids by providing names and addresses of various bidders who may be interested in the project.
- We will attend a pre-bid conference to discuss the scope of work and visit the site with potential bidders.
- We will assist the Owner in evaluating bids it receives and make recommendations pertaining to the award of a construction contract.
- During the construction phase we will represent the Owner before the successful bidder.
- We will review shop drawings, contractor's requests for information, and requests for substitution of methods or materials.
- We will process any requests for change orders.
- We will review contractor's periodic requests for payment and make a recommendation to the City as to the disposition of the request for payment.
- We will make periodic site visits during the course of the construction project to observe the progress of the work, make spot measurements and inspections for determining general conformance with the intent of the construction documents. We will not provide a resident project representative (inspector) for the project under these Basic Services. We will not be required to uncover all defects in construction but will endeavor to protect the Owner against defective or incomplete work
- We will prepare a pre-final punch-list identifying incomplete or unsatisfactory work and provide it to the contractor and Owner.
- We will make final site observation to determine that the punch-list items have been reconciled in conformance with the intent of the construction documents.

To accomplish this scope we propose to make a minimum of five (5) site visits during construction plus a final site visit to view the work

Expenses NOT included are the following, some of which can be added to the scope at additional cost. Please contact me if you have any interest in the following:

- a) We do not foresee and did not include any geotechnical investigations on the site.
- b) We have not included any laboratory testing of construction materials but will coordinate sampling and testing with your approved testing laboratory. Costs for testing is by Owner.
- c) We did not include removal of filter hatchways nor internal examination of filter media.
- d) We did include the services of a full-time resident project representative (inspector) for the project.
- e) Boundary or any mapping survey of the site is not included.
- f) We have not included visits to factories, production facilities, testing facilities or other facilities outside of Bryan, Texas.
- g) We are engineers and not contractors. We have not included any costs for construction in our fees.

- h) We have not included the costs of review or inspections by Registered Accessibility Specialists or building code officials. Costs for permits are the responsibility of others.

The engineer's opinion of probable construction cost is not a bid to construct the improvements nor is it an estimate in the sense that detailed quantities of work and labor and materials are examined. It is an opinion based on the engineer's judgment and experience in similar situations on other projects and does not necessarily reflect the actual prices the owner may pay a contractor or in-house labor for making the improvements.

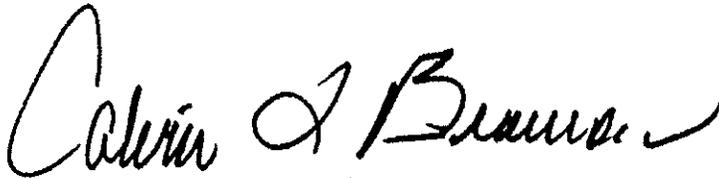
Professional Fees:

The C. T. Brannon Corporation proposes to accomplish this study on behalf of the City of Bryan including all labor, travel, and incidentals as detailed above for a fixed fee not to exceed of **FORTY EIGHT THOUSAND AND NO/100 DOLLARS (\$48,000.00)**.

Additional services authorized in advance by the Owner will be performed according to the attached hourly rates for personnel plus expenses for travel and subsistence or will be according to a supplemental agreement between the City of Bryan and the engineer for a fixed fee addition to the above professional fee.

The C. T. Brannon Corporation has in its employ, registered professional engineers in this state. As the work constitutes engineering under the definitions within the Engineering Practices Act for this state, all work will be supervised and all reports will be signed and sealed by a registered professional engineer.

Sincerely,

A handwritten signature in black ink that reads "Calvin T. Brannon". The signature is written in a cursive, flowing style.

Calvin T. (Terry) Brannon, PE

Attachment II -- Current Hourly Charges for Professional Services

PERSONNEL

Charges include all salaries, salary expense, overhead and profit.

Principal, C. Terry Brannon, P.E.....	\$ 195.00
Principal (Rea Boudreaux, P.E., Bob Breedlove, P. E., Kirk Bynum, P.E.).....	\$ 140.00
Senior Project Manager	\$ 130.00
Project Manager	\$ 110.00
Licensed Engineer.....	\$ 95.00
Graduate Engineer	\$ 75.00
Intern	\$ 30.00
Civil Technician	\$ 70.00
CAD Draftsman	\$ 60.00
Resident Project Representative	\$ 80.00
Construction Services Manager.....	\$ 80.00
Construction Services I.....	\$ 45.00
Office Technician.....	\$ 70.00
Marketing Director	\$ 55.00
Clerical	\$ 45.00

Billing Rates for personnel involved in legal matters (i.e. expert witness or other chargeable time) are 2.5 times the above published numbers.

EXPENSES

Reproduction	
B/W 8.5x11 per each	\$ 0.15
Colored prints 8.5x11 per each.....	\$ 1.00
Colored prints 11x17 per each.....	\$ 1.50
"C", "D" or "E" size Bond per each	\$ 5.00
"C", "D" or "E" size Vellum per each	\$ 10.00
"C", "D" or "E" size Mylar Film per each.....	\$ 10.00
Travel per mile	\$ 0.55
Lodging and meals (Out of town trips).....	Actual Cost
Scanning	
"C", "D" or "E" sized Scanning of original per sheet (does not include plot).....	\$ 50.00

Special contracted services such as reproduction, aerial photography, GPS (Global Positioning Satellite) surveys, contract surveying, geotechnical investigations, project models and artists renderings, and contract project representation is billed at the amount invoiced to us plus ten percent (10%)