

FIRST AMENDED CONTRACT FOR PROFESSIONAL SERVICES

This First Amended Contract For Professional Services (this “Contract”), dated _____, 20___, is between the **City of Bryan**, a Texas home-rule municipal corporation, (“City”) and the C.T. Brannon Corporation, a corporation of Tyler, Smith County, Texas (“Engineer” or “Firm”), whereby Firm agrees to provide the City with certain professional services as described herein and the City agrees to pay Firm for those services. This Contract amends and restates the Engineering Services Agreement that was entered into between the parties on November 18, 2015.

1. Scope of Services

In consideration of the compensation stated in Paragraph 2, Firm agrees to provide the City with the professional services as described in **Exhibit “A”**, (“Proposal” and “Current Hourly Charges for Professional Services”), which is incorporated herein by reference for all purposes, except that to the extent of any conflict between the terms stated herein and the exhibit, the terms herein shall control. The professional services may be more generally described as follows: **Renovations to Swimming Pool – Bryan Aquatic Center Pool (2015-2016)**.

2. Payment

In consideration of Firm’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay Firm according to the terms set forth in **Exhibit “A”**. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all professional services provided under this Contract may not exceed forty-eight thousand dollars (\$48,000.00).

All payments by the City shall be made in compliance with the Texas Prompt Payment Act, found in Texas Government Code Chapter 2251. In compliance with the Act, the City shall provide payment within thirty (30) days from the receipt of each periodic invoice.

Payments are considered overdue on the 31st day unless one of the following conditions exists:

- Dispute between the City and the vendor, contractor, subcontractor or supplier;
- Dispute between the vendor and subcontractor or between the subcontractor and its supplier;
- Payment is to be made with federal funds and regulations governing those funds prevents the City from making a timely payment; or
- The invoice is not mailed to the City per instructions in the purchase order.

The City will pay interest on all overdue payments that do not fall under one of the exemptions listed above. Per the statute, interest will begin to accrue on the date the payment becomes overdue and will accrue at the rate of one percent plus prime. Payment is considered to have been made on the date the payment is mailed or electronically transmitted.

3. Work Product

The City shall have the unrestricted right to use the documents, analyses, and other data prepared by Firm under this Agreement (“Work Products”); provided, however the City shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the attached scope of services, and the Work Products shall not be changed without the prior written approval of Firm. If the City releases the Work Products to a third party without Firm’s prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) the City does so at its sole risk and discretion, (b) Firm shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products, and (c) the City shall indemnify, defend and hold Firm harmless from any and all claims or damages related to the release, change or reuse, to the extent allowed by law.

4. Time of Performance

- A. All professional services provided under this Contract, with the exception of the “Construction Phase” as outline in **Exhibit “A”**, must be completed within six (6) months following execution of this Contract, provided that the City Manager (or designee) may agree to an extension of the time for completion, which shall only be effective upon the execution of an instrument in writing stating the terms of the extension and signed by both the City Manager (or designee) and Firm. The Contract will continue through the Construction Phase until the Firm has completed the final site observation, as outline in **Exhibit “A”**.
- B. **Time is of the essence of this Contract.** Firm shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

5. Warranty, Indemnification, & Release

- A. As an experienced and qualified professional, Firm warrants that the information provided by the Firm reflects high professional and industry standards, procedures, and performances. The Firm warrants the design, preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, are pursuant to a high standard of performance in the profession. The Firm warrants that Firm will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Firm, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their information or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Firm, its employees, associates, agents, or subcontractors.

- B. The Firm shall promptly correct any defective documents furnished by Firm at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Firm's services hereunder or of the Project itself shall in no way alter the Firm's obligations or the City's rights hereunder.
- C. In all activities or services performed hereunder, the Firm is an independent contractor and not an agent or employee of the City. The Firm and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Firm shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Firm shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Firm shall have ultimate control over the execution of the professional services. The Firm shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Firm or any of the Firm's subcontractors.
- D. The Firm must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Firm, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.
- E. **Responsibility for damage claims (indemnification): Firm shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Firm's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. The Firm shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Firm's negligence.**
- F. Release. The Firm releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Firm or its employees and any loss of or damage to any property of the Firm or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Firm's negligent performance of the work. Both the City and the Firm expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

6. Firm's Insurance

The Firm agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City. All parties to this contract hereby agree that the Firm's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Firm must deliver to City a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) business days of notification of the City's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) business days **may cause the contract to be rejected.**

The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

- A. **Workers' Compensation Insurance & Employers' Liability Insurance** - Firm shall maintain Workers' Compensation insurance for statutory limits and Employers' Liability insurance with limits not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Firm shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
- B. **Commercial General Liability Insurance** - Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City and its agents, officers, officials, and employee shall be listed as an additional insured.
- C. **Business Automobile Liability Insurance** - Firm shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Firm shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
- D. **Professional Liability Insurance** - Firm shall maintain Professional Liability (errors & omissions) insurance with a limit of not less than \$1,000,000. If written on a "Claims-Made" form, Firm agrees to maintain a retroactive date equivalent to the inception date of the contract (or earlier) and maintain continuous coverage or a supplemental extended reporting period for a minimum of two years after the completion of this contract. Firm will be responsible for furnishing certification of coverage for two (2) years following contract completion.

- E. **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Firm agrees to endorse City and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.
- F. **Deductibles, Coinsurance Penalties & Self-Insured Retention** - Firm may maintain reasonable and customary deductibles, subject to approval by the City. Firm shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.
- G. **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.
- H. **Evidence of Insurance** – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within ten (10) business days by the successful Firm’s insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City.

Renewal certificates shall be sent a minimum of ten (10) business days prior to coverage expiration. Upon request, Firm shall furnish the City with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan
Risk Management
PO Box 1000
Bryan, TX 77805
Emailed to: mquiroya@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Firm’s obligation to maintain such insurance.

- I. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits** – Firm must provide minimum thirty (30) calendar days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, the Firm shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Firm until coverage is reinstated.
- J. **Firm’s Failure to Maintain Insurance** – If the Firm fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Firm until coverage is reinstated or to terminate the Contract.
- K. **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well

as the City's review or acceptance of insurance coverage to be maintained by Firm, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Firm under the Contract.

- L. **Right to Review and Adjust** - The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

7. **Dispute Resolution**

Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this agreement or the transactions contemplated hereby, in lieu of a trial before the judge.

8. **Termination**

- A. The City may terminate this Contract at any time upon **thirty (30)** calendar day's written notice. Upon the Firm's receipt of such notice, the Firm shall cease work immediately. The Firm shall be compensated for the services satisfactorily performed prior to the termination date.
- B. If, through any cause, the Firm fails to fulfill its obligations under this Contract, or if the Firm violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Firm **five (5)** business days written notice to the Firm. The Firm will be compensated for the services satisfactorily performed before the termination date.
- C. No term or provision of this Contract shall be construed to relieve the Firm of liability to the City for damages sustained by the City because of any breach of contract by the Firm. The City may withhold payments to the Firm for the purpose of setoff until the exact amount of damages due the City from the Firm is determined and paid.

9. **Miscellaneous Terms**

- A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.
- B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of Bryan
Attn: Darrell Lovelette

C.T. Brannon Corporation
Attn: Calvin (Terry) Brannon, P.E.

P.O. Box 1000
Bryan, Texas 77805

P.O. Box 7487
Tyler, Texas 75711

- C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- D. This Contract represents the entire and integrated agreement between the City and the Firm and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.
- E. This Contract and all rights and obligations contained herein may not be assigned by the Firm without the prior written approval of the City.
- F. The Firm, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Firm must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.
- G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

City of Bryan:

C.T. Brannon Corporation:

Jason P. Bienski, Mayor

Calvin (Terry) Brannon, President

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney

**EXHIBIT “A”
PROPOSAL AND CURRENT HOURLY CHARGES FOR
PROFESSIONAL SERVICES**

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 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. (Terry – would these visits also include some inspection services to check compliance with design standards?)
 - 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.

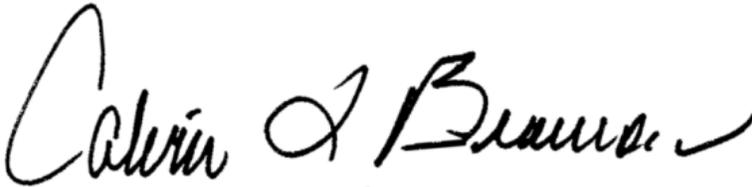
Professional Fees:

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 style with a large initial 'C' and a long horizontal stroke at the end.

Calvin T. (Terry) Brannon, PE

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%)