

AGREEMENT FOR ARCHITECTURAL SERVICES

DEER PARK COMMUNITY CENTER NEEDS ASSESSMENT

This Agreement is made and entered into in Deer Park, Harris County, Texas on the ____ day of _____, 2018; by and between

The City of Deer Park, a Municipal Corporation in the State of Texas

And

Brinkley Sargent Wiginton Architects, Inc., [ARCHITECT] duly licensed, and practicing under the laws of the State of Texas.

Said Agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the ARCHITECT for ARCHITECTURAL services hereinafter set forth in connection with the above-designated Project for the City of Deer Park.

DEER PARK retains [ARCHITECT] to perform ARCHITECTURAL services related to the study of a proposed new Community Center project in Dow Park in return for consideration to be paid by DEER PARK under terms and conditions set forth below.

ARTICLE 1. SCOPE OF WORK

- 1.1 ARCHITECT will provide ARCHITECTURAL, design, consultation, project management, and other services as required to perform and complete the Scope of Work & Services specifically identified in Attachment A of this Agreement. The Services Scope of Work (the “Work”) and the time schedules set forth in Attachment A are based on information provided by DEER PARK and ARCHITECT. The schedule of milestones and deliverables are essential terms of this Agreement.
- 1.2 If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by DEER PARK, or if DEER PARK directs ARCHITECT to change the original Scope of Work shown in Schedule A, a written amendment equitably adjusting the costs, performance time and/or terms and conditions, shall be executed by DEER PARK and ARCHITECT.
- 1.3 DEER PARK reserves the right to retain ARCHITECT to proceed into design and construction phases of project, with fees to be agreed upon at that time. Should design work proceed as contemplated by the study outcome without significant changes,

ARCHTECT will credit a commiserate portion of the schematic design fee, as agreed upon by both parties.

ARTICLE 2. COMPENSATION

- 2.1 ARCHTECT bills for its services on a time and materials basis using the Schedule of Rates and Terms entitled Estimated Level of Effort (“Schedule of Rates”) attached as Schedule B of this Agreement. As requested, ARCHTECT has provided fee proposal for the Work, attached as “Exhibit A”. ARCHTECT will not exceed that fee without prior approval from DEER PARK. ARCHTECT will notify DEER PARK, for approval, of any proposed revisions to the Schedule of Rates and effective date thereof which shall not be less than thirty (30) days after such notice.
- 2.2 ARCHTECT will submit monthly invoices for Services rendered, and DEER PARK will make payment within thirty (30) days of receipt of ARCHTECT’S invoices. If DEER PARK objects to all or any portion of an invoice, it will notify ARCHTECT of the same within fifteen (15) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice. Prices or rates quoted do not include state or local taxes.

ARTICLE 3. DEER PARK’S RESPONSIBILITIES

- 3.1 DEER PARK will designate in writing the person or persons with authority to act on DEER PARK’s behalf on all matters concerning the work to be performed.
- 3.2 DEER PARK will furnish to ARCHTECT all existing studies, reports, data and other information available to DEER PARK necessary for performance of the Work, authorize ARCHTECT to obtain additional data as required, and furnish the services of others where necessary for the performance of the Work. ARCHTECT will be entitled to use and rely upon all such information and services.
- 3.3 Where necessary to performance of the Work, DEER PARK shall arrange for ARCHTECT to have access to any site or property.

ARTICLE 4. PERFORMANCE OF SERVICE

- 4.1 ARCHTECT’s services will be performed within the schedule and time period set forth in Exhibit A.
- 4.2 ARCHTECT shall perform the Work, and any additional services as may be required, for the development of the Project to completion.

- 4.3 If required, additional services will be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.
- 4.4 If any time period within or date by which any of ARCHITECT's services are to be performed is exceeded for reasons outside of ARCHITECT's reasonable control, all rates, measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.

ARTICLE 5. CONFIDENTIALITY

- 5.1 ARCHITECT will hold confidential all information obtained from DEER PARK, not previously known by ARCHITECT or in the public domain.

ARTICLE 6. STANDARD OF CARE & WARRANTY

- 6.1 Standard of Care. In performing services, ARCHITECT agrees to exercise professional judgment, made on the basis of the information available to ARCHITECT, and to perform its ARCHITECTURAL services with the professional skill and care of competent design professionals practicing in the same or similar locale and under the same or similar circumstances and professional license. ARCHITECT also agrees to perform its ARCHITECTURAL services as expeditiously as is prudent considering this standard of care. This standard of care shall be judged as of the time and place the services are rendered, and not according to later standards.
- 6.2 Warranty. If any failure to meet the foregoing standard of care Warranty appears during one year from the date of completion of the service and ARCHITECT is promptly notified thereof in writing, ARCHITECT will at its expense re-perform the nonconforming work.
- 6.3 The foregoing Warranty is the sole and express warranty obligation of ARCHITECT and is provided in lieu of all other warranties, whether written, oral, implied or statutory, including any warranty of merchantability. ARCHITECT does not warrant any products or services of others. ARCHITECT, however, expressly acknowledges that these warranty obligations do not eliminate the applicability of the standard of care to all of its work and that the OWNER may still retain remedies against ARCHITECT following the expiration of the warranty period in contract, tort, or otherwise as the law allows.

ARTICLE 7. INSURANCE

- 7.1 ARCHITECT will procure and maintain insurance as required by law. At a minimum, ARCHITECT will have the following coverage:
 - (1) Workers compensation and occupational disease insurance in statutory amounts.

- (2) Employer's liability insurance in the amount of \$1,000,000.
- (3) Automobile liability in the amount of \$1,000,000.
- (4) Commercial General Liability insurance for bodily injury, death or loss of or damage to property of third persons in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate.
- (5) Professional errors and omissions insurance in the amount of \$1,000,000.

7.2 ARCHITECT has provided a Statement of Insurance to DEER PARK demonstrating and reflecting that ARCHITECT has procured and maintains insurance coverage in accordance with the requirements stated above. That Statement of Insurance is Attachment C of this Agreement.

ARTICLE 8. INDEMNITY

8.1 TO THE FULLEST EXTENT PERMITTED BY LAW, ARCHITECT SHALL INDEMNIFY, AND HOLD HARMLESS THE CITY OF DEER PARK, ITS OFFICERS, OFFICIALS, AGENTS, DIRECTORS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, OR OTHER HARM TO THE EXTENT SUCH BODILY INJURY, PROPERTY DAMAGE, OR HARM ARISES OUT OF OR IS OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ARCHITECT OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE INDEMNITOR EXERCISES CONTROL.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ARCHITECT AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ARCHITECT'S LIABILITY.

8.2 ARCHITECT agrees to and shall contractually require its consultants and subcontractors of any tier to assume the same indemnification obligations to Indemnities as stated herein.

ARTICLE 9. OWNERSHIP OF DOCUMENTS

9.1 As long as DEER PARK is current in the payment of all undisputed invoices, all work product prepared by the ARCHITECT pursuant to this Agreement, including, but not

limited to, all Contract Documents, Plans and Specifications and any computer aided design, shall be the sole and exclusive property of DEER PARK, subject to the ARCHITECT's reserved rights.

- 9.2 ARCHITECT's technology, including without limitation customary techniques and details, skill, processes, knowledge, and computer software developed or acquired by ARCHITECT or its Consultants to prepare and manipulate the data which comprises the instruments of services shall all be and remain the property of the ARCHITECT.

ARTICLE 10. INDEPENDENT CONTRACTOR

- 10.1 The ARCHITECT is an independent contractor and shall not be regarded as an employee or agent of the DEER PARK.

ARTICLE 11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 11.1 The ARCHITECT shall observe all applicable provisions of the federal, state and local laws and regulations, including those relating to equal opportunity employment.

ARTICLE 12. SAFETY

- 12.1 DEER PARK shall inform the ARCHITECT and its employees of any applicable site safety procedures and regulations known to DEER PARK as well as any special safety concerns or dangerous conditions at the site. The ARCHITECT and its employees will be obligated to adhere to such procedures and regulations once notice has been given.
- 12.2 ARCHITECT shall not have any responsibility for overall job safety at the site. If in ARCHITECT's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, ARCHITECT may immediately suspend performance until such safety standards can be attained. If within a reasonable time site operations or conditions are not brought into compliance with such safety standards, ARCHITECT may in its discretion terminate its performance, in which event, DEER PARK shall pay for services and termination expenses as provided in Article 18.

ARTICLE 13. LITIGATION

- 13.1 At the request of DEER PARK, ARCHITECT agrees to provide testimony and other evidence in any litigation, hearings or proceedings to which DEER PARK is or becomes a party in connection with the work performed under this Agreement, unless DEER PARK and the ARCHITECT are adverse to one-another in any such litigation.

- 13.2 Any litigation arising out of this Agreement between DEER PARK and ARCHITECT shall be heard by the state district courts of Harris County.

ARTICLE 14. NOTICE

- 14.1 All notices to either party by the other shall be deemed to have been sufficiently given when made in writing and delivered in person, by electronic mail, facsimile, certified mail or courier to the address of the respective party or to such other address as such party may designate.

ARTICLE 15. TERMINATION

- 15.1 The performance of work may be terminated or suspended by DEER PARK, for any reason. Such suspension or termination shall be subject to notice of DEER PARK's election to either suspend or terminate the Agreement fifteen (15) days' prior to the effective suspension or termination date. The Notice shall specify the extent to which performance of work is suspended or terminated and the date upon which such action shall become effective. In the event work is terminated or suspended by DEER PARK prior to the completion of services contemplated hereunder, ARCHITECT shall be paid for (i) the services rendered to the date of termination or suspension and reasonable services provided to effectuate a professional and timely project termination or suspension.

ARTICLE 16. SEVERABILITY

- 16.1 If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ARTICLE 17. WAIVER

- 17.1 Any waiver by either party or any provision or condition of this Agreement shall not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition, unless such waiver is so expressed in writing and signed by the party to be bound.

ARTICLE 18. GOVERNING LAW

- 18.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Texas.

ARTICLE 19. CAPTIONS

- 19.1 The captions contained herein are intended solely for the convenience of reference and shall not define, limit or affect in any way the provisions, terms and conditions hereof or their interpretation.

ARTICLE 20. ENTIRE AGREEMENT

- 20.1 This Agreement, its articles, provision, terms, and attached Schedules represent the entire understanding and agreement between DEER PARK and ARCHITECT and supersede any and all prior agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both parties.

This Agreement is effective on the last day signed.

Brinkley Sargent Wiginton Architects, Inc.

The City of Deer Park

By

By_____

Name

Name_____

Stephen Springs, AIA

Title

Title_____

Senior principal

Date

Date_____

October 31, 2018

SCHEDULE A

SCOPE OF SERVICES

The proposed project consists of providing a needs assessment for a proposed new Community Center project as outlined in attached Exhibit A.

SCHEDULE B

COMPENSATION AND RATES

Fees for the scope of services shall be as proposed in attached Exhibit A. Any adjustments to scope and fee shall be as mutually agreed upon by both parties. Any adjustments based on hourly rates shall be based on Exhibit B (architectural) and Attachment II (aquatic consultant).

EXHIBIT A

October 31, 2018

Charlie Sandberg
Director of Parks and Recreation
City of Deer Park
710 East San Augustine
Deer Park, Texas 77536

RE: Community Recreation Center and Aquatic Study

Dear Charlie:

We are pleased to submit this Consulting Services Proposal for the development of a Community Center Needs Assessment: This agreement is between the City of Deer Park, Texas ("City") and Brinkley Sargent Wiginton Architects, Inc. ("BSW").

A. Scope of Work

- 1.) Develop a Needs Assessment for a new community recreation center.
- 2.) Develop a Needs Assessment for an indoor pool.
- 3.) Evaluate existing pool facility for continued use and potential year-round operation.
- 4.) Develop a complete project budgets for three conceptual project options within Dow Park.
- 5.) Develop conceptual site plan for the selected option within Dow Park.
- 6.) Reference Exhibit B for a more complete description of tasks.

B. Study Final Deliverables:

- 1.) Needs assessment documentation.
- 2.) Project budgets for new building options.
- 3.) Conceptual site plan of selected option meeting City needs.
- 4.) One conceptual rendering of building.
- 5.) Operational cost analysis of proposed building (Optional).

C. Study Assumptions:

- 1.) Environmental assessment of existing buildings is not included in these services.
- 2.) A city-led steering committee will guide the Needs Assessment process.
- 3.) Consultant is not required to host general public input meetings.
- 4.) Consultant will present status updates at project milestones to public bodies.
- 5.) Scope of work is limited to development of activities defined in Exhibit B.

D. City Provided Data

- 1.) Survey data to be provided by City.
- 2.) Existing programming and operational data to be provided by City.

E. Schedule

- 1.) Initial meeting will occur within two weeks of BSW receipt of executed contract.

<u>Meeting</u>	<u>Activities</u>
1.)	1 day of meetings with department and steering committee to prioritize anticipated programming needs.
2.)	1 day of meeting(s) to confirm and rank programmatic needs with staff and city designated representatives.
3.)	1 day of meeting(s) to review scoping options and site test fits.
4.)	1 day of meeting(s) to review refinement of option(s) and project budget(s).
5.)	1 day of meeting(s) to present report to Council, Parks & Recreation Commission and Deer Park CDC.
6.)	1 additional meeting day (TBD) for use as may be required by City for any reason.
7.)	Monthly meetings during course of effort (via web meeting or conference call as needed).

- 2.) Schedule assumes 14 weeks from receipt of contract to issuance of draft report. This schedule assumes a two-week dead period to accommodate holiday season. Final report will be issued within one week following receipt of City draft report comments.

3.) Basic Service Compensation:

Architectural Fees	\$50,000
Existing Pool Assessment	\$11,225
*Reimbursable allowance (estimated)	\$ 6,000
Total Fees & Reimbursable Costs	\$67,225

* Reimbursable expenses will be billed at cost plus 10% for administrative purposes.

4.) Additional Services Upon Request:

Estimated operations model on community center	\$20,000
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We look forward to working with the City on this exciting and important project!

Stephen Springs, AIA

Senior Principal

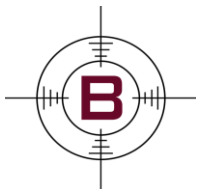
BRINKLEY SARGENT WIGINTON ARCHITECTS

EXHIBIT B

**BILLING RATES
2018**

<u>TITLE</u>	<u>RATE/hr.</u>
Senior Principal	270.00
Principal	210.00
Project Manager	200.00
Project Architect	165.00
Senior Designer	145.00
Staff Architect	130.00
Architectural Designer II	125.00
Architectural Designer I	95.00
Senior Interior Designer	125.00
Interior Designer	110.00
Construction Administrator	140.00
Senior Programmer	140.00
Senior Planner	105.00
Administration	80.00

Billing Rates are reviewed by Architects yearly. Rates are subject to adjustment July 1st of each year



THE C.T. BRANNON CORPORATION

AQUATIC CONSULTANTS

CIVIL ENGINEERS

AIRPORT CONSULTANTS

Attachment II

Current Hourly Charges for Professional Services

PERSONNEL

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

Sr. Principal, C. Terry Brannon, P.E.	\$ 225.00
Principal (Rea Boudreaux, P.E., Bob Breedlove, P. E. Kirk Bynum, P.E.)	\$ 175.00
Jr. Principal (Travis Bozick, P.E.)	\$ 150.00
Senior Project Manager	\$ 145.00
Project Manager	\$ 125.00
Licensed Engineer	\$ 110.00
Graduate Engineer III	\$ 90.00
Graduate Engineer II	\$ 85.00
Graduate Engineer I	\$ 80.00
Intern	\$ 45.00
Civil Technician	\$ 85.00
CAD Draftsman	\$ 80.00
Resident Project Representative	\$ 90.00
Construction Services Manager	\$ 95.00
Construction Services Technician	\$ 75.00
Office Technician	\$ 80.00
Marketing Director	\$ 65.00
Clerical	\$ 60.00

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	\$ 15.00
"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)	\$ 2.00

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%).

January 18, 2018



1321 SOUTH BROADWAY
P.O. BOX 7487
TYLER, TX 75711
PHONE (903) 597-2122
FAX (903) 597-3346

WWW.BRANNONCORP.COM
TEXAS REGISTERED ENGINEERING FIRM
TEXAS REGISTRATION #F-242
REGISTERED IN: AL, AR, CO, FL, GA, LA, MO
MS, NE, NM, NV, OK, TN, VA