

AGREEMENT FOR ARCHITECTURAL SERVICES

Feasibility Study and Building Assessment - Jimmy Burke Activity Center and Surrounding Area

This Agreement is made and entered into in Deer Park, Harris County, Texas on the **15** day of **October 2019**; by and between

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

And

Brown Reynolds Watford Architects, Inc. (BRW Architects), ARCHITECT(s) 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 **Brown Reynolds Watford Architects, Inc. (BRW Architects)** to perform ARCHITECTURAL services related to the design and construction of the **Feasibility Study and Building Assessment - Jimmy Burke Activity Center and Surrounding Area** 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 Attachment A, a written amendment equitably adjusting the costs, performance time and/or terms and conditions, shall be executed by DEER PARK and ARCHITECT.

ARTICLE 2. COMPENSATION

- 2.1 ARCHITECT 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 Attachment B of this Agreement. As requested, ARCHITECT has provided an estimate of the fees for the Work amounting to **\$26,400**. ARCHITECT will not exceed that estimate without prior approval from DEER PARK. ARCHITECT 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 ARCHITECT will submit monthly invoices for Services rendered, and DEER PARK will make payment within thirty (30) days of receipt of ARCHITECT’S invoices. If DEER PARK objects to all or any portion of an invoice, it will notify ARCHITECT 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 ARCHITECT all existing studies, reports, data and other information available to DEER PARK necessary for performance of the Work, authorize ARCHITECT to obtain additional data as required, and furnish the services of others where necessary for the performance of the Work. ARCHITECT 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 ARCHITECT to have access to any site or property.

ARTICLE 4. PERFORMANCE OF SERVICE

- 4.1 ARCHITECT’S services will be performed within the schedule and time period set forth in Attachment A.
- 4.2 ARCHITECT 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, DAMAGES, LOSSES, LAWSUITS, JUDGEMENTS, FINES, PENALTIES, OR LIABILITY INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, OR OTHER HARM IS CAUSED 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 ARCHITECTS 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.

Brown Reynolds Watford Architects, Inc.

By 

Ray Holliday, AIA, ASLA, LI
Name

Principal
Title

October 17, 2019
Date

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The City of Deer Park

By_____

Name_____

Title_____

Date_____

SCHEDULE A SCOPE OF WORK

The proposed project consists of providing **Feasibility Study and Building Assessment - Jimmy Burke Activity Center and Surrounding Area** to determine the appropriate building and facility improvements, and budgets to develop a new activity center as well as a master plan for continued development of the 45-acre Minchen Athletic Complex and surrounding Area. The study will provide several options of how the new Activity Center could be used throughout the year as well as possible phasing options for further development of the Athletic Complex. The athletic park assessment will analyze the existing athletic complex and determine several possible locations for the new Activity Center. BRW Architects will analyze the existing athletic complex to studying vehicle traffic and parking, pedestrian circulation, way finding, restroom facilities, hardscape deficiencies, landscape deficiencies, building and fire code deficiencies, as well as ADA deficiencies.

Comprehensive Facilities Study includes the following:

Activity Center

BRW Architects will provide conceptual design of the new Activity Center. The new Activity Center will consist of approximately 25,000 square feet of multi-use space to be used for various events throughout the year. The facility will also have a visitor center to aid in activities and current events as well as a museum reflecting the city's past. The building will be designed to current international and local codes. BRW will propose 3 possible solutions of various designs to meet the city's needs.

Master plan of the Athletic complex

BRW will analyze the characteristics of the site focusing in on the function of the site during normal usage as well as peak usage. We will review the vehicular circulation into, out of, and through the site during the day as well as projected traffic during large events. We will review sun angles, wind patterns, existing utilities, topography, existing vegetation, flood plain and drainage. BRW Architects will also analyze pedestrian circulation, way finding, restroom facilities, hardscape, landscape, building and fire code, as well as ADA.

For both Activity Center and Master Plan the following 5 services will be provided:

1. **Site Analysis**
The Site Analysis will analyze the existing conditions of the site. BRW will provide summary report and a conceptual site plan drawing. We will also review city codes and ordinances for detention and building setbacks. BRW has a checklist of over 30 characteristics to analyze the existing site for compliance.
2. **Programming**
BRW along with the City of Deer Park will develop a program of space needs for the new Activity Center and Athletic Complex Master Plan. The program will include a summary of each room and the proposed sizes. The program will be critical in examining the configuration of the building onto the site, such as public/private separation. The program will also include increased parking requirements, site lighting, additional sidewalks, landscaping, and hardscape.
3. **Conceptual Design**
BRW will provide a conceptual floor plan with room layouts and sizes identified from programming. Included in conceptual design will be a site plan indicating drives and parking, and landscaping. A master plan for future development will also be included in conceptual services.
4. **Computer Imaging**
Computer images will consist of up to four (4) 3-D computer images for the Activity Center and four (4) 3-D computer images of the Site and Master Plan design. The images will include building massing, materials, doors, windows, and other general detail information. The site will indicate hardscape vs plantings along with the sports fields as well as other details.
5. **Cost Proposal**
Concept statement of probable cost forecasted for construction in 2020. Statement of probable cost will analyze construction costs as well as total project costs breakdown for the new Activity Center and Athletic Park improvements.

The first step in a feasibility study is developing programming. BRW, working with the City, will develop a program of spaces and needs for the new facility. BRW will compose a summary sheet listing the spaces, functions, amenities, special requirements, required adjacencies, type of lighting, outdoor furniture, signage, and proposed occupancy. BRW will also include a detailed summary of the proposed uses and spaces. BRW will provide 10 copies in a bound booklet.

Code research. BRW will research the International Building Code requirements as well as plumbing, electrical, lighting, and mechanical, site, floodplain, TAS, TX Dot, and TCEQ by identifying requirements and restrictions related to the new building.

Conceptual Design. BRW will provide three schemes for conceptual design of the facility. Upon review of the schemes, one of the schemes is selected for modification and further development in Conceptual Design. The Architect shall provide Conceptual Design Documents based on the mutually agreed-upon space program, schedule, and budget for the Cost of the Work. The documents shall establish the preliminary design illustrating the scale and relationship of the components. Upon refinement of the preferred conceptual scheme BRW will provide, a colored site plans, floor plans and exterior/interior 3-D images. BRW will submit 10 copies (11 x 17) of the conceptual designs for the Owner's review and comment.

Statement of Probable Cost. BRW will provide a statement of probable cost at the completion of Schematic Design, which will be a general estimate developed from several cost data bases including our own to determine the cost per square foot. BRW will submit 10 copies of the (8 ½ x 11) estimate.

Meetings / Presentations: We are anticipating two (2) visits for council presentations and five (5) visits for the data gathering design meetings for a total of 7 visits.

ARCHITECTURAL Services:

Brown Reynolds Watford Architects, Inc. (BRW Architects) presents this proposal to complete design ARCHITECTURAL and construction services. **Brown Reynolds Watford Architects, Inc. (BRW Architects)** will complete the following tasks:

1. Attend one site visit with City representatives for programming/preliminary design purposes.
2. Acquire and review any existing site topographical data to determine if additional data is needed.
3. Prepare a **Feasibility Study and Building Assessment** for the **Jimmy Burke Activity Center and Surrounding Area** project. The ARCHITECT report will determine the appropriate building and facility improvements, and budgets to develop a new Activity Center as well as a master plan for continued development of the 45-acre Minchen Athletic Complex. BRW Architects will utilize and make ready any existing City standard details as relative to the project.
4. See Attachment A for review schedule.
5. BRW Architects will make two (2) presentations to the City Council for their approval of the design. See Attachment A.
6. See Attachment A for deliverables.
7. ARCHITECT will provide design and technical support. The scope of this task includes coordination with the City on design issues as requested. BRW Architects will make two (2) presentations to the City Council for their approval of the design.
8. ARCHITECT will formally communicate with the City via e-mail on a weekly and monthly basis on the progress of the project and convey issues with their resolution.
9. See Attachment A for deliverables and schedule.
10. ARCHITECT will review and advise on any design modification or changes suggested by the City.

Design Completion:

Based on requirements provided by the City, ARCHITECT will complete necessary ARCHITECTURAL analyses and calculations to design the **Feasibility Study and Building Assessment - Jimmy Burke Activity Center and Surrounding Area** facility. ARCHITECT will hold a design review meeting with the City to refine all associated documents (i.e., drawings, specifications and all other necessary documents).

For the 30% design deliverable, the specification and plan sheets will include:

See Attachment A.

For the 60% design deliverable, the specification and plan sheets will include:

See Attachment A.

For the 90% design deliverable, the specification and plan sheets will include:

See Attachment A.

The 100% Analysis Report will include: Site Analysis, Programming, Conceptual Design, Computer Imaging and Cost Proposals. See Attachment A for the Deliverables.

SCHEDULE B

COMPENSATION AND RATES

Position	Rate
Principal	\$ 190.00
Project Manager	\$ 160.00
Senior ARCHITECT – MEP	\$ 140.00
Project ARCHITECT	\$ 120.00
ARCHITECT in Training	\$ 90.00
CAD Technician	\$ 75.00
Administration	\$ 60.00

COMPENSATION

- A. Payment for Architectural services is not to exceed an amount of **\$26,400.00** to be invoices monthly based on the percentage of the hourly not to exceed amount projected.
- B. Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as stated below.

Design of Master Plan

1. Site Analysis	\$1,200
2. Programming	\$800
3. Master Plan	\$4,200
4. Over all Site layout and 3-D Renderings	\$2,800
5. Estimated Construction costs	<u>\$600</u>
SUBTOTAL	\$9,600

Design of Activity Center

1. Site Options	\$800
2. Programming	\$1,600
3. Conceptual Design	\$5,400
4. Site Design and 3-D Renderings	\$4,600
5. Estimated Construction costs	<u>\$1,200</u>
SUBTOTAL	\$13,600

Write narratives and format the final report

SUBTOTAL	<u>\$3,200</u>
	\$3,200

NOT-TO-EXCEED BASIC SERVICES FEE

\$26,400

PROJECT SCHEDULE:

We anticipate the Feasibility Study to be completed in **90 calendar days** upon notice to proceed from the City of Deer Park.