

STATE OF TEXAS §
 § **AGREEMENT FOR PROFESSIONAL SERVICES**
COUNTY OF COLLIN §

This Agreement for Professional Services (“Agreement”) is made by and between the City of Allen, Texas (“City”) and **BW2 Engineers Inc.** , a **Consulting Firm** (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist the City in **Allen Public Library Parking Lot Expansion** (the “Project”); and

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items or materials prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II
Scope of Service

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services outlined in Exhibit “A.”

2.2 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the following projected schedule.

	Allen Public Library Expansion
Notice to Proceed	October 11, 2016
Preliminary Meeting with City	October 12, 2016
Begin Field Surveys	October 17, 2016
Complete Field Surveys	October 28, 2016
Submit Preliminary Plans to City for Review	December 2, 2016
Receive Review Comments from City	December 19, 2016
Complete Final Plans	January 6, 2016
Advertise Project	January 19, 2017
Receive Bid	February 15, 2017
Award Contract	February 28, 2017
Notice to Proceed	TBD
Construction	TBD

The City requires that the Design Phase of the Scope of Service outlined above be completed within [140] calendar days of the signing of the contract. Three weeks for each review is included in the overall completion time. Construction Administration Services will continue for the duration of the Construction Contracts.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services and outlined below, not to exceed a total amount of Fifty Four Thousand Seven Hundred Seventy Five Dollars (**\$54,775**).

A. BASIC SERVICES:

1.	TOPOGRAPHIC SURVEY	\$	7,450
2.	CIVIL ENGINEERING	\$	27,350
3.	LANDSCAPE & IRRIGATION	\$	15,875
4.	SITE LIGHTING	\$	4,100

TOTAL SERVICES:\$ 54,775

4.2 Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.3 Unless otherwise provided in the Scope of Services the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

**Article V
Notice to Proceed**

Professional shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Professional prior to Professional's receipt of a written Notice to Proceed from City shall be entirely at Professional's own risk. Work performed and expenses incurred after Professional has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

**Article VI
Suspension of Work**

City shall have the right to immediately suspend work by Professional if City determines in its sole discretion that Professional has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Professional shall be suspended until Contractor has taken satisfactory corrective action.

Article VII

Devotion of Time; Personnel; and Equipment

7.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

7.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

7.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

7.4 The Professional shall submit monthly progress reports and attend progress meetings as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VIII Miscellaneous

8.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

8.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

8.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

8.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

8.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

8.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

8.8 Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

8.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Peter H. Vargas
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

If intended for Professional:

Attn: Jim Waldbauer, P.E.
President
BW2 Engineers, Inc.
1919 S. Shiloh Road
Suite 500, LB 27
Garland, Texas 75042

8.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

8.10 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE PROFESSIONAL'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

8.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2016.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

EXECUTED this _____ day of _____, 2016.

BW2 ENGINEERS, INC.

By: _____
Name: Jim Waldbauer, P.E.
Title: President

ATTEST:

By: _____
Name: _____

EXHIBIT “A”
Scope of Services
(to be attached)



BW2 ENGINEERS, INC.

September 12, 2016

Mr. Kevin Bates, P.E.
Project Manager
Engineering Department
305 Century Parkway
Allen, TX 75013

Re: Proposal for Professional Engineering and Surveying Services
Allen Public Library Expansion Project

Dear Kevin:

BW2 Engineers, Inc. (BW2) is pleased to present you this proposal for professional engineering and surveying for the future expansion project for the Allen Public Library. The project is located at the southeast corner of the intersection of Allen Drive and St. Mary Drive.

Based on information provided by the City, a future project at the Library site is being considered to expand the existing library building and parking area. A conceptual layout of the parking area expansion has been prepared by City Staff and was utilized in the preparation of this proposal.

BW2 will provide the necessary engineering and surveying services, office and field, in order to complete a detailed, topographic survey, prepare a digital base map (AutoCad format) for use by City Staff, and prepare civil, lighting, landscape, and irrigation construction drawings for the proposed parking and related improvements. The City will complete the conceptual layout of the future parking area and provide that layout to BW2 for use in developing a construction set of improvements. The services are described below.

In order to complete the project, BW2 will utilize the services of David C. Baldwin Landscape Architecture for landscape and irrigation design and Syska Hennessy for electrical lighting design.

SCOPE OF SERVICES

Topographic Surveying

BW2 will perform field surveying of the project area including verification of property / boundary lines and detailed topographic information. A topographic survey of the existing parking area along with the remaining vacant area to the north and east of the library building will also be completed in order to utilize this topographic information for design purposes. Property lines of adjoining properties, rights of way and subdivision plats will be verified. The detailed topographic survey will include features such as curb and gutter, pavement edges, street centerline, driveways, power poles, guys, fences, natural ground elevations, pond elevations, pond controlling structures, all significant trees within the project area, etc. BW2 will also establish a benchmark local to the project area. The area to be surveyed is approximately 8.2 acres in size.

BW2 will provide the City a digital topographic drawing in AutoCad format of the subject project area that will include contours at one-foot intervals. The horizontal datum will be based on State Plane coordinates (NAD 83), for the State of Texas, North Central Zone, at surface. The vertical datum will be based on NAVD 1998. BW2 will also provide hard copies of the completed topographic survey.

Civil Engineering

BW2 will prepare civil engineering construction plans for the proposed library parking and related improvements to generally include:

- Prepare a Dimensional Control Plan for the site improvements.
- Prepare a Paving Plan depicting pavement types, limits and joint layout. It is assumed that a pavement design will be either based on city standard details or be determined by a geotechnical consultant.
- Prepare a Grading Plan consistent with the drainage improvements and/or site conditions.
- Perform an earthwork analysis and calculations for the proposed parking area layout in order to assist with project bidding.
- Prepare an Erosion Control Plan for the site improvements.
- Prepare a Storm Drainage Plan including a drainage area map, pipe profiles and relocation of the existing storm detention area.
- Prepare necessary construction details, if not available as City standard construction details.
- Coordinate with the City of Allen during the plan review process and make revisions as required to meet approvals.
- Assist the City with limited Bidding and Construction Phase Services to generally include preparation of addenda and review of shop drawings and submittals.

Landscaping and Irrigation Design

David C. Baldwin (DCB) will prepare landscaping and irrigation construction plans for the proposed library parking and related improvements to generally include:

- Prepare a Tree Removal / Tree Mitigation Plan for the site improvements to include verification of species, caliper, and condition of existing trees.
- Prepare a Schematic Design of landscaping improvements showing overall landscaping improvements for islands, edges and street frontages including landscaping concepts for the storm detention area.
- Based on approved Schematic Design prepare construction documents for detailed layout and specifications for landscaping and detailed layout and specifications for irrigation system.
- Assist the City with limited Bidding and Construction Phase Services to generally include preparation of addenda, review of selected plant materials, and review of shop drawings and submittals.

Lighting Design

Syska Hennessy (SH) will prepare parking lot lighting construction plans for the proposed library parking and related improvements to generally include:

- Prepare a Site Lighting Layout Plan for the lighting improvements.
- Prepare a Photometric Plan with site lighting calculations.
- Coordination with other improvements such as landscaping and civil items.
- Assist the City with limited Bidding and Construction Phase Services to generally include preparation of addenda and review of shop drawings and submittals.

COMPENSATION

BW2 can complete the aforementioned Scope of Services for the following fixed fees:

Topographic Survey	\$ 7,450
Civil Engineering	\$ 27,350
Landscape & Irrigation	\$ 15,875
Site Lighting	\$ 4,100

Total:	\$ 54,775
--------	-----------

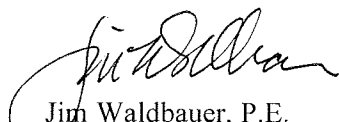
ASSUMPTIONS

BW2 has made the following assumptions in preparing this proposal:

- These surveying services are not to be construed as a Boundary Survey.
- No water/wastewater design services are included in this proposal.
- Resolution of any boundary discrepancies, conflicts or errors is not included in this proposal.
- It is assumed that the electrical site lighting fixtures will be consistent with the existing fixtures.

BW2 sincerely appreciates the opportunity to provide these professional services to the City of Allen. We look forward to working with you on this important project. If you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Jim Waldbauer, P.E.
Project Manager

JFW/maw