

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and Berry Dunn McNeil & Parker, LLC or (the “Professional”), acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to engage the services of Professional as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

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

WHEREAS, the Professional hereby agrees to provide the City with Professional Consulting Services in accordance with 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 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”), and continue for one year or until completion of the services by the Professional, unless sooner terminated as set forth herein. Thereafter, the City, at its sole option, shall have the right to renew the term of this Agreement for two (2) additional one (1) year periods, under the same terms and conditions upon written notice to the Professional thirty (30) days prior to the expiration of the then current term.

1.2 Either party may terminate this Agreement by giving ninety (90) days prior written notice to the other party. In the event of such termination, the Professional shall have ninety (90) days to complete any work then in progress; and shall deliver to the City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. In the event of such termination, the 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 Services

2.1 The Professional shall provide the services set out in this Agreement and the Statement of Work attached as Exhibit "A" (the "Statement of Work").

2.2 The parties acknowledge and agree that any and all opinions provided by the Professional represent the best judgment of the Professional.

2.3 All materials and reports prepared by the Professional in connection with this Agreement are "works for hire" and shall be the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports in accordance with applicable laws of the State of Texas. Professional shall, upon completion of the services, or earlier terminated, provide the City with reproductions of all materials and reports, and in electronic format if requested by the City.

2.4 In case of conflict between this Agreement and other documents enumerated as forming a part of this Agreement, the provisions of this Agreement shall govern.

Article III Compensation

3.1 The City shall compensate the Professional for the services by payment of a fee as set forth in Exhibit "A". The City agrees to employ Professional on a project-by-project basis and to compensate the Professional for those services based on pre-approved Statement of Work including detailed project descriptions and costs that fit within the Professional's approved budget, see Exhibit "A".

3.2 Professional Services under this agreement for year one, as defined in Article I, for an amount of \$67,340. Optional reimbursable costs related to travel are not to exceed \$7,660, establishing a total project budget not to exceed \$75,000.

3.3 Payment to the Professional shall be monthly based on the Professional's monthly invoice. The monthly invoice shall contain the following items, if applicable: itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the work, the time worked, the actual work 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. The monthly invoices shall be submitted on or before the 15th day of each calendar month. 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.

3.4 Unless otherwise provided herein, 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, unless otherwise provided herein.

3.5 The parties recognize that the continuation of this agreement after the close of any given fiscal year of the City, which fiscal year ends on September 30th of each year, shall be subject to City Council appropriation of funds for the ensuing fiscal year. In the event that the City does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties thereafter shall have no further obligations hereunder.

Article IV Devotion of Time; Personnel; and Equipment

4.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the work 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 at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

4.2 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 cost of such personnel and assistance shall be borne exclusively by the Professional.

4.3 The Professional shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article V Miscellaneous

5.1 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.

5.2 Assignment. The Professional may not assign this Agreement in whole or in part 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.

5.3 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.

5.4 Governing Law. The laws of the State of Texas shall govern this Agreement; 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.

5.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

5.6 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.

5.7 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.

5.8 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 of Allen
305 Century Pkwy.
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Professional:

Attn: Berry Dunn McNeil & Parker
Attn: Chad Snow, Engagement Manager
100 Middle Street
Portland, ME 04104-1100

5.9 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.

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

5.11 Indemnification.

- (a) TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS PROVIDED BY (B) BELOW THE PROFESSIONAL SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (COLLECTIVELY THE "CITY INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF A PERSON OR PROPERTY DAMAGE, INCLUDING THE LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE PERFORMANCE OF WORK OR SERVICES OF THE PROFESSIONAL, AND IT'S SUB-CONTRACTORS UNDER THIS AGREEMENT, OR THE RESULT OF ANY NEGLIGENT ACT OR OMISSION OR ANY INTENTIONAL ACT OR OMISSION IN VIOLATION OF THE PROFESSIONAL'S STANDARD OF CARE BY THE PROFESSIONAL, IT'S SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE PROFESSIONAL OR ANYONE FOR WHOSE ACTS THE PROFESSIONAL MAY BE LIABLE OR DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY THE PROFESSIONAL, IT'S SUB-CONTRACTORS, OR ANY OF THEIR AGENTS AND EMPLOYEES, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE PROFESSIONAL, IT'S SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE PROFESSIONAL, IT'S SUB-CONTRACTORS OR ANYONE FOR WHOSE ACTS THE PROFESSIONAL OR IT'S SUB-CONTRACTOR MAY BE LIABLE.
- (b) THIS INDEMNITY DOES NOT EXTEND TO THAT PORTION OF A CLAIM FOR WHICH ANY CITY INDEMNITEE IS FOUND BY FINAL JUDGMENT, FINAL BINDING DISPUTE RESOLUTION PROCESS OR ARBITRATION AWARD TO HAVE BEEN NEGLIGENT OR AT FAULT. EXCEPT AS PROVIDED IN SUB SECTION (1) BELOW, IN THE EVENT THAT A CITY INDEMNITEE IS FOUND, BY A FINAL JUDGMENT, FINAL BINDING DISPUTE RESOLUTION PROCESS OR ARBITRATION AWARD TO BE

NEGLIGENT OR AT FAULT IN WHOLE OR IN PART, THE INDEMNITY AND HOLD HARMLESS OBLIGATION OF THE CONTRACTOR WITH REGARD TO ATTORNEYS' FEES, LITIGATION COSTS OR DISPUTE RESOLUTION AND ARBITRATION COSTS AND EXPENSES INCURRED IN DEFENSE OF SUCH CLAIM SHALL BE REDUCED BY THE PERCENTAGE OF NEGLIGENCE OR FAULT OF CITY INDEMNITEE.

(1) INDEMNIFICATION FOR EMPLOYEE INJURY CLAIMS. WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, PROFESSIONAL HEREBY INDEMNIFIES AND HOLDS HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF THE PROFESSIONAL OR IT'S SUB-CONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY CITY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE PROFESSIONAL AND THE CITY THAT IN SUCH EVENT THE PROFESSIONAL IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF PROFESSIONAL'S EMPLOYEE OR THE EMPLOYEE OF ANY OF IT'S SUB-CONTRACTORS. WITH REGARD TO CLAIMS AGAINST ANY PARTY SEEKING INDEMNITY UNDER THIS AGREEMENT WHICH ARE MADE BY AN EMPLOYEE OF THE PROFESSIONAL, IT'S SUB-CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE PROFESSIONAL, IT'S SUB-CONTRACTOR OR ANYONE FOR WHOSE ACTS THE PROFESSIONAL OR SUB-CONTRACTOR MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL NOT BE LIMITED BY ANY LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE PROFESSIONAL, IT'S SUBCONTRACTOR OR ANY OTHER EMPLOYER UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER SIMILAR EMPLOYEE BENEFIT ACTS. THE PROFESSIONAL SHALL PROCURE LIABILITY INSURANCE COVERING PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION.

(c) IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR

ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR THE ADDITIONAL INSURED REQUIREMENTS UNDER THE INSURANCE REQUIRED BY THIS AGREEMENT, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE CONTRACTUAL OBLIGATIONS AND SHALL OPERATE TO AMEND THE OBLIGATIONS TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT. SHOULD ANY PROVISION OR ANY PART OF ANY PROVISION OF THIS AGREEMENT BE HELD INVALID, UNENFORCEABLE OR CONTRARY TO PUBLIC POLICY, LAW, STATUTE OR ORDINANCE, THEN THE REMAINDER OF THE PROVISION, PARAGRAPH, THIS SECTION AND/ OR THIS AGREEMENT SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN VALID AND FULLY ENFORCEABLE.

- (d) THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT SHALL SURVIVE THE COMPLETION OR ABANDONMENT OF THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT AND THE TERMINATION OF THE AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

5.12 Audits and Records. The Professional agrees that during the term hereof the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Professional's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

5.13 Insurance.

- (a) Professional shall, during the term hereof, maintain in full force and effect the following insurance: (1) a 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 per occurrence for injury to persons (including death), and for property damage; (2) Professional Liability Insurance (if applicable) with limit of not less than \$2,000,000, for all negligent acts, errors, and omissions by the Professional, its sub-contractor, consultants and employees, that arise out of the performance of this Agreement; (3) policy of automobile liability insurance covering all operations of the Professional its officers, agents, and employees involving the use of any vehicles, including all owned, non-owned and hired vehicles and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability; and (4) statutory

Worker's Compensation Insurance covering all of Professional's employees involved in the provision of services under this Agreement.

- (b) Waiver of Subrogation Rights. The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City Indemnitees.
- (c) Additional Insured Status. With the exception of Worker's Compensation Insurance and any Professional Liability Insurance, all insurance to be required pursuant to this Agreement shall be endorsed to include and name the City Indemnitees as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City Indemnitees under Texas law, including products/completed operations. The Additional Insured status for the City shall remain in force and effect for a minimum of four (4) years following the completion of the services provided pursuant to this Agreement and the termination of this Agreement.
- (d) Certificates of Insurance. Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of any work or services under this Agreement and annually for a minimum of four (4) years following the completion of the services. All required policies shall be endorsed to provide the City with thirty (30) days advance notice of cancellation or material change in coverage. On every date of renewal of the required insurance policies, the Professional shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Professional shall within ten (10) business days after written request provide the City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the Certificates of Insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the payment of any amounts due to Professional by the City. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this Agreement. All policies and endorsements shall remain in effect for not less than four (4) years after completion of the services provided pursuant to this Agreement.
- (e) Carriers. All policies of insurance required to be obtained by the Professional pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to City and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. 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. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.

(Signature page to follow)

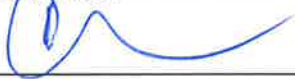
EXECUTED this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

EXECUTED this 25th day of August, 2017.

Berry Dunn McNeil & Parker

By:  _____

Name: Charles D. Snow

Title: Principal

EXHIBIT "A"
STATEMENT OF WORK

EXHIBIT “B”