

PROFESSIONAL SERVICES AGREEMENT
for
OFFICE ALLOCATION AND LAND UTILIZATION STUDY
FOR KEALY, ANNEX, AND FRED HERRING REC CENTER

The City of Lewisville, Texas (the "City"), hereby engages Parkhill, Smith and Cooper, Inc. (the "Consultant"), to perform professional services in connection with an Office Allocation and Land Utilization Study at the Kealy, Annex, and Fred Herring Rec Center properties (the "Project").

- I. **PROJECT.** The Project is described in the "Project Summary" portion of the Consultant's Proposal (the "Proposal"), attached hereto as Exhibit A.
- II. **SCOPE OF SERVICES.** The Scope of Services for the Project is outlined in the "Scope of Services" section of the Proposal (Exhibit A).
- III. **COMPENSATION.** Compensation for the Project shall be as outlined in "Scope and Task Fees" section of the Proposal (Exhibit A).

Phase 01 | Task 1-5

Compensation for Phase 01 services will be a lump sum of \$76,930.00, inclusive of direct expenses.

Phase 02 | Task 6A – 6B

Phase 02 services are considered additional services and will only be engaged via subsequent written authorization. Compensation for Phase 02 services will be a lump sum of \$71,774.00, inclusive of direct expenses.

Invoices shall be submitted by cover letter from the Consultant. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on percentage of work completed per identifiable unit of work. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

- IV. **INSURANCE.** The Consultant agrees to maintain insurance throughout the term of the contract, in accordance with Attachment "A". All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Consultant. Insurance certificate must be received and approved prior to commencement of work. The Consultant shall also review and forward certificates covering sub-consultants.
- V. **REUSE OF DOCUMENTS.** All documents, including drawings and specifications prepared by the Consultant pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written

verification or adaptation by the Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon the City and the Consultant.

- VI. OWNERSHIP OF DOCUMENTS.** Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Consultant. The Consultant shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.
- VII. THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT IS CAUSED BY OR RESULTS FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY AND DEFENSE PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE DUTY TO DEFEND SHALL NOT APPLY IN THE CASE OF A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, ITS AGENTS OR EMPLOYEES, OR OTHER ENTITY (EXCLUDING THE CONSULTANT OR ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL) OVER WHICH THE CITY EXERCISES CONTROL, IN WHICH INSTANCE THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED BY CONSULTANT IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

- VIII. TIME OF COMPLETION.** A project schedule, as shown in the Proposal (**Exhibit A**), is hereby included in this Professional Services Agreement by reference. The Consultant agrees to perform the services in accordance with the schedule, to the extent over which the Consultant has control.
- IX. TERMINATION.** This Agreement may be terminated without cause at any time prior to completion of the Consultant's services by the City, or by the Consultant with cause, upon seven days written notice to the City at the address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Paragraphs V, VI and VII above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
- X. CONFIDENTIAL INFORMATION.** To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
- XI. GOVERNING LAW AND VENUE.** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
- XII. ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
- XIII. PROTECTION OF RESIDENT WORKERS.** The City of Lewisville actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Consultant shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at the City's expense.
- XIV. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Consultant shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years.

The Consultant shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Consultant if the City determines that (a) the Consultant or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Consultant fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Consultant or its Subcontractors fail to timely notify the City of an IRCA violation.

XV. ADA COMPLIANCE. All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.

XVI. SUCCESSORS AND ASSIGNS. The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

XVII. DISCLOSURE. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

XVIII. TEXAS GOVERNMENT CODE CHAPTER 2270. Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

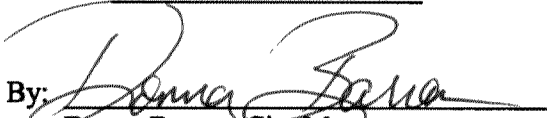
XIX. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

XX. PERFORMANCE: In compliance with Texas Local Government Code 271.904, the Contractor agrees to perform the services outlined herein with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license; and to perform the services outlined herein as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect or engineer, under the schedule as referenced in Section VIII of this Agreement.

XXI. CLOSURE. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

CITY OF LEWISVILLE, TEXAS

Approved by the Lewisville City
Council May 21, 2018

By: 
Donna Barron, City Manager

Date: May 22, 2018

By: 
Scott Nelson AIA, Principal


Date: 05/09/2018

Attest: 
Julie Worster, City Secretary

Attest: 
Michael Howard, Project Manager

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:


Lizbeth Plaster, City Attorney

May 1, 2018

Keith Marvin
Director of Public Services
City of Lewisville
151 W. Church Street
Lewisville, Texas 75057

Re: Proposal for Architectural/Engineering Services
City of Lewisville Office Allocation and Land Utilization Study

Dear Mr. Marvin:

Parkhill, Smith & Cooper, Inc. (A/E) is pleased to have the opportunity to provide a proposal for professional architectural and engineering services to City of Lewisville (Owner) for the Office Allocation and Land Utilization Study (Project). The following outlines our understanding of the project scope and how we propose to provide services for your project.

PROJECT SUMMARY

The Project consists of architectural master planning and design services at two properties owned by the City of Lewisville, including Civic Circle and Kealy Complex as shown on attached Exhibit B: Site Drawings. The A/E will consult with the Owner to develop a master plan for future improvements at each site including potential renovations/additions to existing buildings and new construction.

SCOPE OF SERVICES

A detailed outline of the proposed scope of services is attached as Exhibit A: Scope and Task Fees. The following buildings and the staff departments housed within each building will be included in the scope of work:

Building	Site	Total Bldg SF	Total Assessed SF	Staff Departments
Municipal Center Annex	Civic Circle	38,218	38,218	IT, Parks, Courts, City Attorney, Police, 911 Dispatch
Fred Herring Recreation Center	Civic Circle	29,900	10,000 (Classrooms Only)	Parks
Public Services Bldg A	Kealy Complex	9,800	Not in Scope	Public Services (Fleet, Facilities)
Public Services Bldg B/C	Kealy Complex	5,550	Not in Scope	Public Services (ECS, Utilities, Stormwater), IT
Public Services Bldg D	Kealy Complex	21,034	21,034	Public Services (Public Works, Utilities, Traffic, ULM)
Parks Maintenance Bldg	Kealy Complex	12,050	12,050	Parks
Public Safety Training Center	Kealy Complex	24,278	Not in Scope	Police, Fire
Old Animal Shelter	Kealy Complex	7,400	Not in Scope	n/a

Owner will provide A/E with the following:

- Maps, building plans and drawings, and site surveys
- Age, condition, and maintenance history of major building systems
- Staffing levels by department and building
- Relevant demographic and socio-economic data

Specifically excluded from our scope of services are:

- Topographic, Boundary, and Tree Surveys
- Geotechnical Investigations and Reports
- Hydraulic/Hydrology and Flood Plain Studies
- Asbestos and Hazardous Materials Studies

SCHEDULE

PSC will render its services as expeditiously as is consistent with professional skill and care. During the Project, unanticipated events may impact the Project schedule. Based on the proposed scope of work, we anticipate a 16-week duration.

FEE PROPOSAL

Our fees for the Project will be a lump sum amount of **\$148,704.00**, inclusive of direct expenses. A detailed outline of the fee is attached as Exhibit A: Scope and Task Fees. The A/E fee shall be invoiced monthly based on percent of work completed.

Should the scope of services change during the Project, or additional services need to be rendered, the amount not to exceed will be adjusted by a mutually agreed upon amount based on our Schedule of Hourly Rates and will be authorized in writing by the Owner.

Upon your review and approval of this Proposal, we will prepare an agreement to proceed with Architectural/Engineering services.

Again, it is a pleasure for PSC to have this opportunity to be of service to you and we look forward to partnering with you in this endeavor. Please do not hesitate to call us at 972.987.1670 if you have any questions.

Sincerely,



Scott A. Nelson, AIA
Principal
snelson@team-psc.com



Michael I. Howard, AIA, ASLA
Project Manager
mhoward@team-psc.com

Exhibit A: Scope and Task Fees

		Totals
Task 1: Project Startup		
a.	Prepare for and facilitate kickoff meeting with PSC and City staff	\$ 1,552
b.	Secure and aggregate base data including staffing levels, site/floor plans, and review existing studies	\$ 892
c.	Prepare a detailed project schedule/work plan	\$ 636
<i>Deliverables: kickoff meeting; project schedule/work plan</i>		
<i>Subtotal</i>		\$ 3,080
Task 2: Project Coordination and Management		
a.	Team coordination meetings with City staff (bi-weekly or as-needed, 8 total)	\$ 7,328
b.	Facilitate building tours of comparable facilities at peer cities (over one day)	\$ -
<i>Deliverables: peer city facility tours</i>		
<i>Subtotal</i>		\$ 7,328
Task 3: Facility Condition Assessment		
a.	Collect and analyze data on the age and condition of systems at each facility to determine deferred maintenance and current renewal needs with associated costs; calculate a facility condition index to recommend renovation or replacement	\$ 5,976
b.	Conduct on-site verification of existing conditions related to MEP, structural, and architectural systems including building code and ADA compliance	\$ 5,888
<i>Deliverables: facility assessment summary presentation/report</i>		
<i>Subtotal</i>		\$ 11,864
Task 4: Peer Benchmarking and Staff/Space Demand Forecasting		
a.	Collect and analyze benchmarking data (including staffing and building square feet) from 5 peer cities	\$ 4,024
b.	Review and aggregate population projections from local, state and national demographic sources	\$ 1,632
c.	Forecast staffing levels and space demand (staff, equipment, storage) based on projected population growth	\$ 4,280
<i>Deliverables: peer benchmarking and space demand forecasting summary presentation/report</i>		
<i>Subtotal</i>		\$ 9,936
Task 5: Programming and Functional Adequacy		
a.	Input existing floor plans and site drawings into BIM.	\$ 22,096
		Hourly NTE
b.	Interview stakeholders/department leads at each facility utilizing questionnaires to determine the spatial requirements for staffing, equipment, and storage and assess the functional adequacy of existing buildings based on size, location, and spatial adjacency (2 day work session)	\$ 9,152

- c. Prepare and present an architectural program outlining spatial requirements for each dept \$ 12,224

Deliverables: architectural programming report for each staff department and building

Subtotal \$ 43,472

Task 6A: Master Planning and Concept Design - CIVIC CIRCLE

- a. Based on programming task, develop a master plan for each site (Civic Center) utilizing blocking diagrams demonstrating a site fit test and illustrating future build-out by department. \$ 12,784
- b. Based on master plan block diagrams, prepare room-by-room floor plans each site. \$ 9,724
- c. Develop conceptual 3-D massing studies for building(s) at each site, including exterior concept rendering (non-photorealistic). \$ 6,896
- d. Implementation & Phasing of the Master Plan including logistics and future project buildout cost. \$ 5,232
- e. Prepare final summary presentation and present findings of study at Council Work Session. \$ 2,444

Deliverables: site master plans as colored renderings; concept floor plan drawings; council work session summary presentation/report

Subtotal \$ 37,080

Task 6B: Master Planning and Concept Design - KEALY COMPLEX

- a. Based on programming task, develop a master plan for each site (Kealy Complex) utilizing blocking diagrams demonstrating a site fit test and illustrating future build-out by department. \$ 9,648
- b. Based on master plan block diagrams, prepare room-by-room floor plans each site. \$ 9,532
- c. Develop conceptual 3-D massing studies for building(s) at each site, including exterior concept rendering (non-photorealistic). \$ 6,924
- d. Implementation & Phasing of the Master Plan including logistics and future project buildout cost. \$ 4,872
- e. Prepare final summary presentation and present findings of study at Council Work Session. \$ 2,468

Deliverables: site master plans as colored renderings; concept floor plan drawings; council work session summary presentation/report

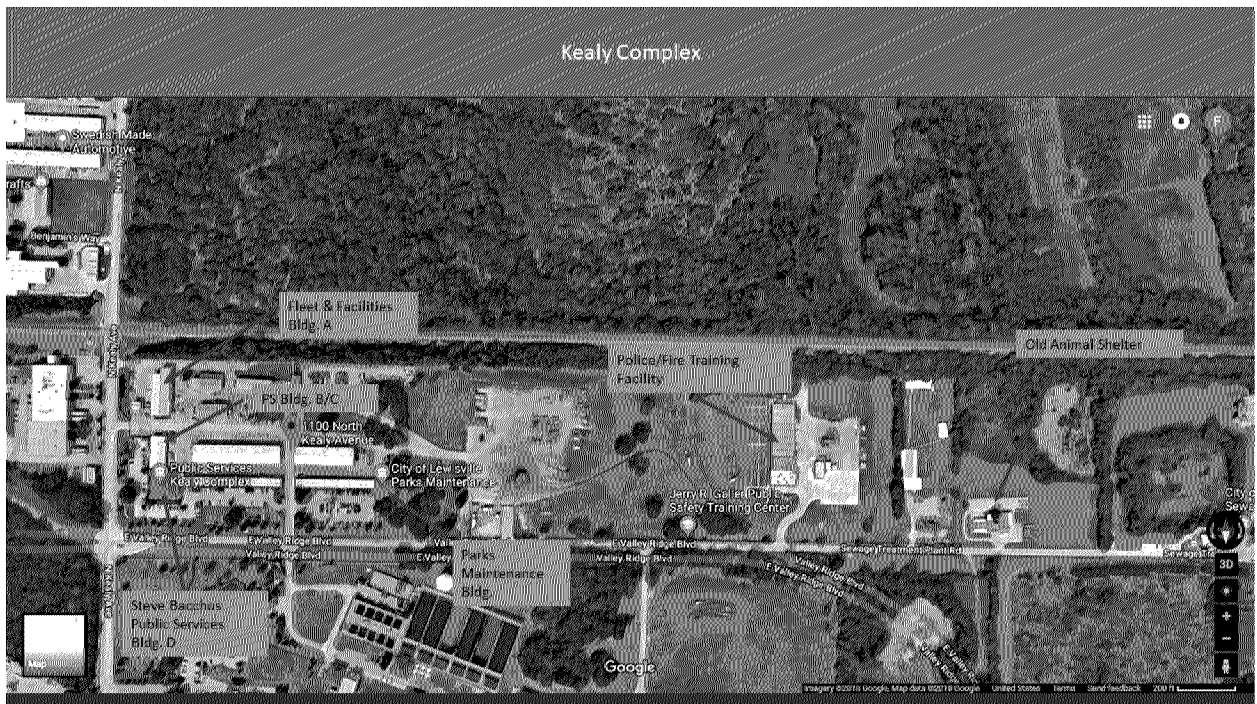
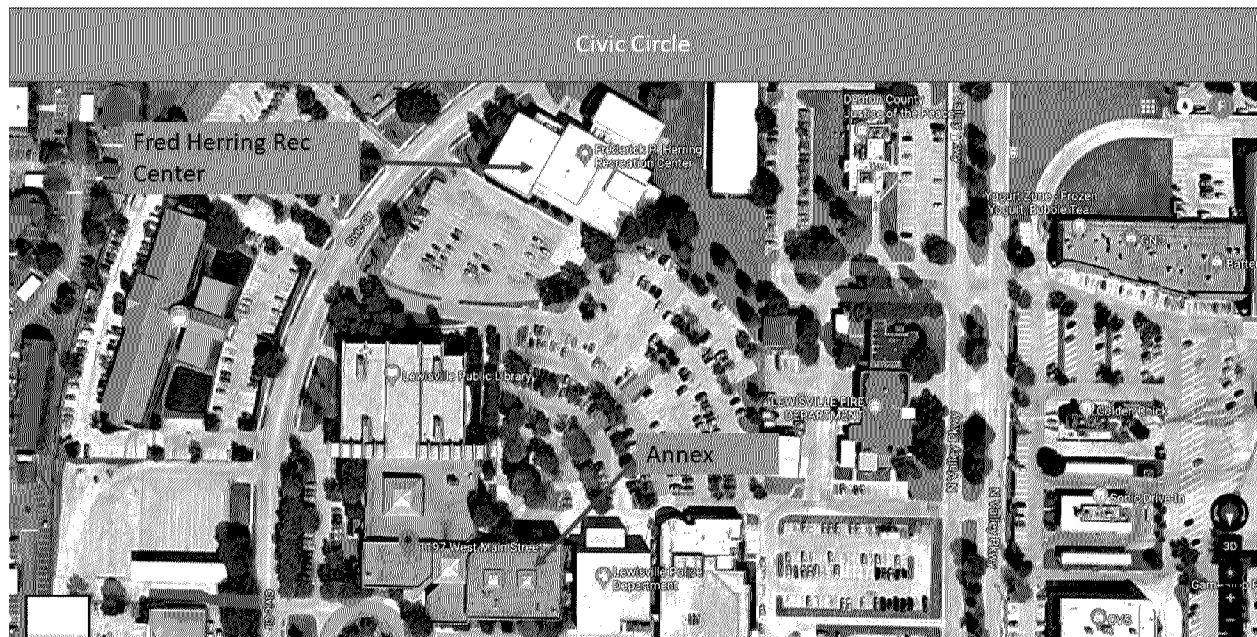
Subtotal \$ 33,444

Labor Subtotal \$ 146,204

Expenses Subtotal \$ 2,500

TOTAL FEE \$ 148,704

Exhibit B: Site Drawings



City of Lewisville | Office Allocation Land Utilization Study
SCHEDULE

Exhibit C

TASKS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
	June				July				Aug					Sept.				Oct.				Nov.		
01. Project Startup																								
Kick-off meeting																								
02. Project Coordination & Management																								
Coordination meeting																								
03. Facility Condition Assessment																								
04. Peer Benchmarking & Staff/Space Demand Forecasting																								
05. Programming & Functional Adequacy																								
06A. Master Planning & Concept Design Civic Circle																								
06B. Master Planning & Concept Design Kealy Complex																								

ATTACHMENT A
INSURANCE REQUIREMENTS
ENGINEERING/ARCHITECTURE PROJECTS

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Vendor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable except for professional liability.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability – as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.
4. Professional Liability and/or Errors and Omissions Insurance.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises – Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Use of Contractors and Subcontractors
 - e. Personal Injury
 - f. Broad Form Property Damage
 - g. If applicable, Explosion Collapse and Underground (XCU) Coverage (when applicable, Fire Damage, Medical Expense).

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.
4. Professional Liability and/or Errors and Omissions - \$500,000 per occurrence - \$1,000,000 Aggregate.
5. Builders' Risk Insurance (as applicable) – Completed value form, insurance carried must equal the completed value of the structure.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.
 - b. The vendor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, and employees, Boards and Commissions or volunteers.
 - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.
2. Waiver of Subrogation – All Coverages except Professional Liability
Each insurance policy required by this exhibit except Professional Liability shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.
3. Notice of Cancellation - All Coverages
Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except

after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.

4. Professional Liability (applicable only to certified or licensed Engineers and or Architects)
“Claims made” policy is acceptable coverage which must be maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City.

E. ACCEPTABILITY OF INSURERS

The City prefers that Insurance be placed with insurers with an A.M. Best’s rating of no less than **A-:VI, or, A or better** by Standard and Poors. Professional Liability carriers will need to be approved by the HR Director or designee.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. HOLD HARMLESS AND INDEMNIFICATION

THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT IS CAUSED BY OR RESULTS FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY AND DEFENSE PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE DUTY TO DEFEND SHALL NOT APPLY IN THE CASE OF A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, ITS AGENTS OR EMPLOYEES, OR OTHER ENTITY (EXCLUDING THE CONSULTANT OR ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL) OVER WHICH THE CITY EXERCISES CONTROL, IN WHICH INSTANCE THE CITY’S REASONABLE ATTORNEY’S FEES SHALL BE REIMBURSED BY CONSULTANT IN PROPORTION TO THE CONSULTANT’S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT

INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.