



**NOTICE OF
CELINA ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS
REGULAR MEETING
142 N. OHIO DRIVE
Tuesday, November 5, 2019 at 12:00 PM**

AGENDA

I. Roll Call and Call to Order and identify a quorum present

II. Citizens Forum

III. Discussion and Action to approve Minutes

- A. Celina Economic Development Corporation - Regular Meeting - Oct 1, 2019 12:00 PM
- B. Celina Economic Development Corporation - Regular Meeting - Oct 8, 2019 4:30 PM

IV. Discussion and Action

- A. Celina 15 Presentation
- B. Entertainment District - TBG Proposal

V. Executive Closed Session of the Board of Directors The Celina EDC will now hold a Closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Local Government Code in accordance with the authority contained in the Chapter.

- A. Section 551.072 of Texas Government Code to discuss or deliberate the purchase, exchange, lease or value of real property.
- B. Section 551.074 of Texas Government Code to discuss or deliberate personal matters to evaluate performance and duties, of a public officer or employee.
- C. Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the CEDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.
 - 1. Celina 15

- D. Reconvene into Open Session The Celina EDC will now reconvene into Regular Session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any action necessary regarding the items discussed in executive session.

VI. Discussion and Review of monthly Activities

- A. Director Update

B. Busines Retention Update

VII. Discussion of future EDC agenda items and meetings

VIII. Adjournment

Posted in accordance with the Texas Government Code, Chapter 551, on the ____ day of _____, ____
at _____ p.m.

Staff
CEDC

Date Notice Removed

Pursuant to the Texas Open Meeting Act (Chapter 551, Texas Government Code), one or more of the above items may be considered in executive closed session, closed to the public. Any decision on any item will be taken or conducted in an open session following the conclusion of the executive closed session.

302 W. Walnut St. is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons Celina Economic Development Corporation's office at 972-382-8949, at least two (2) working days prior to the meeting so that appropriate arrangements can be made.



**NOTICE OF
CELINA ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS
REGULAR MEETING
142 N. OHIO DRIVE
Tuesday, October 1, 2019 at 12:00 PM**

MINUTES

I. Roll Call and Call to Order and identify a quorum present

Attendee Name	Organization	Title	Status	Arrived
Carmen Roberts	City of Celina	Board Member	Present	
Mindy Koehne	City of Celina	Vice President	Excused	
Kyle Rose	City of Celina	President	Present	
Jay Pierce	City of Celina	Board Member	Present	
Clint Bissett	City of Celina	Board Member	Present	
Alexis Jackson	City of Celina	Director of Economic Development	Present	
Corbett Howard	City of Celina	Director of Business and Govt Affairs	Present	

President, Kyle Rose, called the meeting to order at 12:06 PM.

II. Citizens Forum

No citizen comments.

III. Discussion and Action to approve Minutes

A. Celina Economic Development Corporation - Regular Meeting - Sep 3, 2019 12:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Jay Pierce, Board Member
SECONDER:	Carmen Roberts, Board Member
AYES:	Roberts, Rose, Pierce, Bissett
EXCUSED:	Koehne

IV. Discussion and Action

A. Celina Chamber of Commerce Agreement

Minutes Acceptance: Minutes of Oct 1, 2019 12:00 PM (Discussion and Action to approve Minutes)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kyle Rose, President
SECONDER:	Jay Pierce, Board Member
AYES:	Roberts, Rose, Pierce, Bissett
EXCUSED:	Koehne

V. Executive Closed Session of the Board of Directors The Celina EDC will now hold a Closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Local Government Code in accordance with the authority contained in the Chapter.

- A. Section 551.072 of Texas Government Code to discuss or deliberate the purchase, exchange, lease or value of real property.
- B. Section 551.074 of Texas Government Code to discuss or deliberate personal matters to evaluate performance and duties, of a public officer or employee.
- C. Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the CEDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.
- D. **Reconvene into Open Session** The Celina EDC will now reconvene into Regular Session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any action necessary regarding the items discussed in executive session.

VI. Discussion and Review of monthly Activities

- A. Introduction of new board member - Clint Bissett
- B. FY 19-20 Marketing Strategies
- C. Director Update
- D. Business Retention Update

VII. Discussion of future EDC agenda items and meetings

VIII. Adjournment

There being no further comment, President Kyle Rose, adjourned the meeting at 12:50 PM.

Chairman

Secretary

Date Minutes Approved

Minutes Acceptance: Minutes of Oct 1, 2019 12:00 PM (Discussion and Action to approve Minutes)



**NOTICE OF
CELINA ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS
REGULAR MEETING
142 N. OHIO DRIVE
Tuesday, October 8, 2019 at 4:30 PM**

MINUTES

I. Roll Call and Call to Order and identify a quorum present

Attendee Name	Organization	Title	Status	Arrived
Carmen Roberts	City of Celina	Board Member	Present	
Mindy Koehne	City of Celina	Vice President	Present	
Kyle Rose	City of Celina	President	Present	
Jay Pierce	City of Celina	Board Member	Present	
Clint Bissett	City of Celina	Board Member	Present	
Alexis Jackson	City of Celina	Director of Economic Development	Present	
Jeannie Regan	City of Celina	Executive Assistant	Present	

President, Kyle Rose, called the meeting to order at 4:30 PM.

II. Citizens Forum

No citizen comments.

III. Discussion and Action

- A. Consider and act on an agreement by and between Celina Economic Development Corporation and Intergrity Books & Payroll

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mindy Koehne, Vice President
SECONDER:	Carmen Roberts, Board Member
AYES:	Roberts, Koehne, Rose, Pierce, Bissett

- B. Consider and act on authorization of financial institution users

President, Kyle Rose, moved to add Jason Barth as a signer on the Lamar Bank account, additionally limiting his authority to anything over \$50,000 would require two signatures. Board member Roberts seconded. Motion carried unanimously.

Vice President, Mindy Koehne, moved to add Kyle Rose as a signer on the Lamar Bank account and to remove Alexis Jackson and Jay Toutouchian as signers on the accounts. Board member Roberts seconded. Motion carried unanimously.

Minutes Acceptance: Minutes of Oct 8, 2019 4:30 PM (Discussion and Action to approve Minutes)

Board Member, Jay Pierce, moved to authorize Alexis Jackson to apply for a \$20,000 credit line and credit card with Lamar Bank. Board member Roberts seconded. Motion carried unanimously.

President, Kyle Rose, moved to authorize Jeannie Regan, as an additional credit card user. Board member Pierce seconded. Motion carried unanimously.

IV. Executive Closed Session of the Board of Directors The Celina EDC will now hold a Closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Local Government Code in accordance with the authority contained in the Chapter.

- A. Section 551.072 of Texas Government Code to discuss or deliberate the purchase, exchange, lease or value of real property.**
- B. Section 551.074 of Texas Government Code to discuss or deliberate personal matters to evaluate performance and duties, of a public officer or employee.**
- C. Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the CEDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.**
- D. Reconvene into Open Session The Celina EDC will now reconvene into Regular Session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any action necessary regarding the items discussed in executive session.**

V. Adjournment

There being no further comment, President Kyle Rose, adjourned the meeting at 4:45 PM.

Chairman

Secretary

Date Minutes Approved

Minutes Acceptance: Minutes of Oct 8, 2019 4:30 PM (Discussion and Action to approve Minutes)



Celina Economic Development Corporation
City of Celina, Texas

Memorandum

To: **Celina Economic Development Corporation Board Members**
From: Alexis Jackson, Director of Economic Development
CC: Jason Laumer, City Manager
Date: November 5, 2019
Re:

Action Requested:

Entertainment District - TBG Proposal

Background Information:

TBG has submitted a proposal to the city for design services for the "Roller Town Entertainment District". The project area is approximately 9 square blocks of the eastern side of downtown. The area is bounded by Main Street, N. Louisiana Drive, W. Malone Street and New Mexico Drive. See Exhibit A.

The scope of services includes a masterplan to create a comprehensive strategy on land use, re-use of existing structures, city wide parking strategy and urban design.

Financial Considerations:

Fees (\$22,000) will be paid out of the Downtown TIRZ #11 funding. The EDC and Council will approve use of funding.

Supporting Documents:

TBG Proposal Attached

Staff Recommendation:

Staff recommends approval.



TBG

10/21/2019
10/28/2019 REV1

Mr. Jason Laumer
City Manager
City of Celina
142 N Ohio St – City Hall
Celina, Texas

Proposal for Professional Design Services

Client: City of Celina
Project Name: Roller Town Entertainment District
Project Location: Downtown Celina, Texas
TBG Project Number: D19246

Dear Mr. Jason,

The Broussard Group, Inc. dba TBG Partners (TBG) is pleased to submit this Proposal for Professional Design Services (the Proposal) for the above referenced Project.

Once executed, the Proposal with attached Terms and Conditions, incorporated herein by reference, will serve as the parties' agreement for TBG's Scope of Services for the Project (the Agreement).

We look forward to the opportunity of working with you. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,

Mark Meyer PLA
Principal

TBG
2001 bryan street
suite 1450
dallas, texas 75201

[214] 744 0757
tbgpartners.com

Attachment: D19246_Roller Town Entertainment District_2019-10-28 (Entertainment District - TBG Proposal)

The Project Team

TBG works in collaboration with you (Client) and your team of professional consultants (the Design Team) to achieve your overall Project goals. We understand that this project currently does not have a project engineer or market analysis. Services provided by these and other consultants are not included in TBG's scope of services and will be contracted separately with the Client if required.

Additional TBG-Recommended Consultants:

- Civil engineer:
- Market analyst

The Property

This property consists of multiple property ownerships and approximately 9 square blocks of the eastern side of downtown Celine. The project is bounded by Main Street, N. Louisiana Drive, W. Malone Street and New Mexico Drive.

The Project

TBG will provide a series of conceptual planning studies of the property with the intent of identifying development and redevelopment options for discussion with the City.

TBG will prepare a comprehensive master plan for the subject area and assist with planning-related discussions with existing stakeholders within the district. The intent of this masterplan is to create a comprehensive strategy on land use, re-use of existing structures, city wide parking strategy, public realm design and urban design,

Entertainment, neighborhood retail and limited residential uses organized around public open space are intended as the primary land uses.

Design Approach

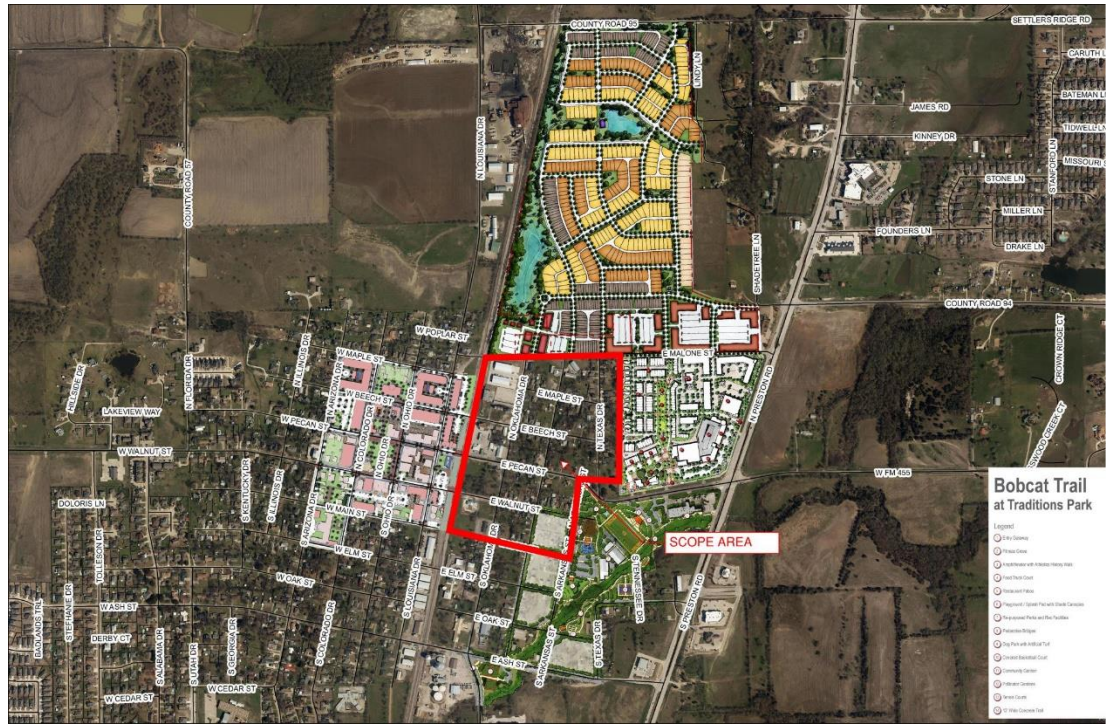
Our design approach requires a thorough understanding of the Project in relation to its social, economic and environmental context to fully realize the unique opportunities and constraints revealed by the Property.

The intent of TBG's design approach will result in a master plan that integrates the following elements:

- 01_ Existing and future entertainment related land uses with the incorporation of a city wide park strategy.
- 02_ Urban Placemaking, allowing for the appropriate preservation, enhancement and/or integration of nature open space systems into the plan.
- 03_ Refining land use strategies and were they be applicable based on multiple development options.

Reference Exhibit 'A' below for our understanding of the current program and site which serves as the basis for this Proposal. In the event that the Project scope changes significantly from Exhibit 'A', TBG reserves the right to revise the Scope of Services and associated fee allocations to align with the scope modifications.

Exhibit 'A'



Plan shown above represents our best understanding of the scope and extent of the Project at the time of preparing this Proposal. Substantive changes may require consideration of Additional Services.

Scope of Services

TBG's design process divides our Scope of Services into three distinct phases: Discovery, Development, and Delivery. By adhering to these three phases in our planning and design process, projects move seamlessly from an idea expressed as a clear vision through design and implementation.

Discovery

To research, analyze and understand the site context as well as programmatic opportunities and constraints. Critical tasks within Discovery include:

- Task One: Site Inventory and Analysis

Development

To develop the Project vision and craft its form and function, from design through documentation. Depending upon the complexity and size of a project, tasks within the Development phase may include these tasks:

- Task Two: Master Plan

Delivery

To consult in the implementation of the Project's vision through the construction phase ensuring compliance with the intent of the overall design and its accompanying story.

If elected by the Client, TBG will propose services to build upon the planning outcomes contained herein on a phase-by-phase basis. Services may include: Schematic Design, Design Development, Construction Documentation, Bidding and Negotiation Assistance and Construction Observation.

Discovery

Task One

Site Inventory and Analysis

Description of Services

TBG will work with the Design Team to study and evaluate the existing conditions of the site and to organize opportunities and constraints that will impact potential design solutions.

TBG will work with the Design Team to study and evaluate the existing conditions of the site and adjacent context area. This task will identify opportunities and constraints and their impact on our planning and design recommendations. During this task, certain studies that impact the performance of this task may be identified by TBG to the Client. To further assist TBG in this task, the Client will provide TBG with any previously prepared studies and analysis of the site. This task is a prerequisite to Task 2: Program Assessment and Analysis.

Site Inventory and Analysis will include the following, to the extent information is available to the project:

- Review existing pertinent data, as provided by the Client and/or readily available from public desktop resources, in the form of base maps, aerial photographs, engineering information, survey information, including boundary topographic and tree survey mapping, planning reports and projections.
- Context Analysis – relationships to adjoining land and tracts, existing ingress/egress, existing development on or adjacent to the site, scenic and obtrusive view characteristics.
- Site Reconnaissance Visit – based on desktop assessment described above, conduct field verification to become familiar with the site's overall characteristics and relationship to the surrounding area.

Deliverables

- Inventory and analysis drawings, diagrams and written narratives
- Site visit report/summary

Task Two

Master Plan

Description of Services

Following the Client's acceptance of the site inventory and analysis in Task One, TBG will work with the Client and Design Team to refine the plan to prepare a conceptual Master Plan suitable for use in development strategy, preliminary pricing, infrastructure coordination, marketing and entitlements. As a basis to this work TBG perform the following engagement:

1. Half day workshop with all stakeholders within the Entertainment District
2. Creation of Overall Masterplan based on deliverables below
3. Review with City Staff and stakeholders
4. Final presentation to City Staff and Council in required.

Deliverables

The conceptual Master Plan will include the following:

- Location and extent of all significant proposed land uses, overall vehicular and pedestrian circulation systems, open space/recreation systems and facilities. This plan will be a hand drawn over an aerial and/or topographic base plan.
- Functional diagrams of the core design concepts
- Street network — TBG will work with the Client and Design Team to identify the primary and secondary project entrances and proposed street cross-sections, including streetscape character. Street sizing will be coordinated with the Client's civil engineer and/or traffic engineer.
- Development diagrams of primary non-residential use types and proposed interior and corner residential lot types, showing proposed building setbacks.
- An overall open space and recreational concept.
- Public open space and uses will be identified, separate and apart from homeowner spaces and uses, which will also be identified.
- Plan will be color rendered.
- Statistical tabulation on approximate yields per land uses.
- The Conceptual Master Plan will be formatted to be added to the Project Character Booklet.

Delivery

During this phase TBG will consult in the implementation of the Project's vision through the construction phase, ensuring compliance with the intent of the overall design vision and its accompanying story. Scope for these services will be identified and addressed as a separate Proposal as the Project progresses.

Proposal Assumptions

TBG's Proposal assumes and is contingent upon the following:

- Client shall provide the following information or services as required for performance of the work. TBG assumes no responsibility for the accuracy of such information or services and will not be liable for errors or omissions therein or the effect of same on TBG's work. Should TBG be required to obtain or compile this information, such services will be charged as Additional Services.
 - _ Legal descriptions of property and record drawings
 - _ Market or demographic studies and reports
 - _ Traffic Impact Analysis
 - _ Topographic, geotechnical and boundary surveys
 - _ Existing site engineering and utility base information
 - _ Engineering, including Civil (utility rough-ins, drainage area improvement) as required
- Client will review and provide comments on drawings and outline criteria provided by TBG.
- TBG will participate in zoning and entitlement efforts only after review and approval of time and materials estimate and based upon specific jurisdictional entitlement requirements.
- TBG will coordinate with Client's other consultants in the Design Team, to the extent their scope of work relates to the landscape architectural design elements within the Project. No fees for these consultants have been included in Scope of Services. As schematic design and design development progress, we will make recommendations for additional sub-consultants, as needed, at an additional fee.
- The following tasks are not included in our Scope of Services:
 - _ Civil engineering of streets, parking and site infrastructure
 - _ Environmental engineering/assessment services
 - _ Legal and land use attorney services for zoning entitlements
 - _ Market research and demographic studies and reports
- TBG shall not be required to sign any documents that would result in its having to certify, guaranty, or warrant the existence of conditions that it cannot independently ascertain.

Schedule

Services described herein are contingent upon schedule requirements provided by the Client or assumed by TBG. Following are specific assumptions contained herein that are the basis for fees and services proposed. Any changes to the assumptions provided will require written acknowledgement and approval of the Client and TBG prior to proceeding. Should the Project schedule change or modify after contract authorization, the Project will be subject to Additional Services. Significant deviations, delays or pauses to the schedule may also be grounds for Additional Services.

Schedule Assumptions

Task	Description	Time	Units
Discovery			
Task One	Site Inventory and Analysis	2	Weeks
Development			
Task Two	Master Plan	3	Weeks
Delivery			
Task TBD	Not included in this Scope of Services (To be provided in a separate Proposal)		
Total TBG Time		5	Weeks

Fees for Professional Services

Fees for basic planning services are variable given the nature and extent of public involvement and other external forces outside of TBG's control. Therefore, service fees where quantifiable are provided as an hourly, not-to-exceed fee, billable by phase and task as indicated below. For some services, the nature and extent of service is impossible to quantify. Those services are billable on an hourly basis (per the schedule of rates provided below) and can be provided incrementally based upon mutual advance agreement between TBG and the Client. Hourly services are indicated in the schedule below, and hourly maximum amounts can be provided upon clarification of schedule and deliverable needs. The fees for this basic Scope of Professional Services will be billed monthly:

Task	Description	Fee	Fee Basis
Discovery			
Task One	Site Inventory and Analysis	\$ 5,000	Lump Sum
Development			
Task Two	Master Plan	\$ 17,000	Lump Sum
Delivery			
Tasks TBD	Not included in this Scope of Services (To be provided in a separate Proposal)		

TBG Scope of Services Total Fees	\$ 22,000
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Note: The Total TBG Scope of Services fee includes fees for land planning services only.

Attachment: D19246_Roller Town Entertainment District_2019-10-28 (Entertainment District - TBG Proposal)

Fees for Additional Services

Additional Services not covered by the Scope of Services outlined above, but requested in writing by the Client, will be billed on an hourly basis, unless otherwise agreed.

Fees for other sub-consultants, such as referenced in Proposal Assumptions, are not included in the Total TBG Scope of Services Fee.

TBG Hourly Rates

Level		Hourly Rate
Staff 1	\$	50-60
Staff 2	\$	65-85
Staff 3	\$	90-110
Staff 4	\$	115-140
Staff 5	\$	145-250

Reimbursables

The following costs shall be reimbursed at cost plus ten percent and are not included in the fee for professional services:

- Cost of copies for drawings, specifications, reports, cost estimates, xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract
- Cost of digital scanning
- Cost of printing for small and large format plots furnished or prepared in connection with the work of this contract
- Travel associated with the Project, including, but not limited to, mileage (current IRS rate), airfare, automobile rental, hotel and meals
- Cost of postage, shipping and delivery expenses other than first class mail
- Cost of models, special renderings, promotional photography, special process printing, document mounting, special equipment, special printed reports or publications, maps and documents approved in advance by the Client
- Photographic services and processing: drone aerial flights, drone insurance, videos and still photos
- Fees for additional consultants retained with the approval of the Client
- TAS Plan Review and Inspection Cost
- PlanGrid charges

If the Proposal, fee of \$22,000 and the Terms and Conditions that follow, which are incorporated herein by reference, meet with your approval, please sign below and return a copy to TBG for our files. TBG must receive a signed copy of the Agreement in order to proceed with the Scope of Services. We look forward to working with you.

APPROVED and agreed: The Broussard Group, Inc.



Mark Meyer PLA
Principal

10/28/19

Date

APPROVED and agreed: City of Celina

BY Authorized Agent

DATE

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, telephone [512] 305 9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249.a, and the Landscape Architects Registration Law, Article 249.c, Vernon's Texas Civil Statutes. Proposal copyright ©2019 by TBG Partners. No portion of this proposal may be copied or distributed without the written permission of TBG Partners.

Attachment: D19246_Roller Town Entertainment District_2019-10-28 (Entertainment District - TBG Proposal)

Terms and Conditions

Effective Date

The Proposal for Professional Design Services (the Proposal) and these Terms and Conditions constitute the full and complete Agreement between the parties (the Agreement) and may be changed only by written agreement signed by both parties. The Agreement shall become effective upon its execution by Client. TBG is not obligated to proceed with the work until the Agreement is signed by Client. No prior oral or written representation regarding the Project and TBG's obligations will be of any force or effect unless said terms are also contained in the Agreement.

Parties to the Agreement

TBG is entering into this professional services agreement for the exclusive benefit of Client. There are no intended third-party beneficiaries of the Agreement. Both TBG and Client agree not to assign the Agreement or any causes of action that arise under it without the express written consent of the other party.

Standard of Care

TBG will exercise that degree of care and skill ordinarily practiced by landscape architects providing similar services for projects of similar scope in the location of the Project. In performing these services, TBG cannot ensure perfection and Client agrees TBG's services are performed without any warranties, either express or implied, as to the quality of its services or of its drawings. TBG is entitled to rely upon documents supplied to it by Client, Client's consultants and contractors, and information from public and other records, without the need for independent verification and without liability for same. TBG shall not be liable for changes, modifications and/or additions to regulatory requirements after the date of the Proposal or, respectively, after the date of any amendments thereto.

Scope and Responsibilities

The duties of TBG shall not be construed to exceed those services specifically set forth in the Proposal. When right of entry to the Project site is required for TBG to perform its services, Client agrees to obtain and accommodate TBG's legal right of entry on the site. Notwithstanding TBG's Scope of Services, TBG, its independent professional associates and/or consultants' do not have any obligation or right to supervise, direct, or have control over the contractor's work and shall not have authority over, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the contractor's failure to perform its work in accordance with the contract documents. TBG, its independent professional associates and/or consultants, shall not have authority over, or responsibility for, safety precautions and programs in connection with the contractor's work. TBG, its independent professional associates and/or consultants, shall not be required to sign any documents that would result in their having to certify, guaranty, or warrant the existence of conditions that they cannot independently ascertain.

TBG's Scope of Services does not include responsibility for detection, remediation, accidental release, reporting or any other service relating to naturally occurring or manmade site conditions, or to waste or hazardous materials, as defined by Federal, State, and local laws or regulations, and **CLIENT AGREES TO RELEASE, DEFEND,**

INDEMNIFY AND HOLD TBG HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM SAME.

Additional Services

Additional Services are services that may be needed by Client, but which are not included in the Scope of Services described in the Proposal. Additional Services will be provided only with prior approval of Client and agreement to compensate TBG for same, and include but are not limited to the following:

- Preparation and presentation of graphic exhibits other than those described in Scope of Services.
- Revisions and changes in drawings, specifications or other documents previously provided by Client, or the preparation of alternates or deductive change orders requested by Client.
- Preparation of record drawings or of measured drawings of existing conditions.
- Providing prolonged construction observation should the construction time be substantially extended through no fault of TBG.
- Providing services if, in Guaranteed Maximum Price (GMP) projects, the construction budget for TBG's scope items is reduced through no fault of TBG.
- Participation in any formal or informal dispute resolution process, litigation, or arbitration to which TBG is not a party, and only with TBG's consent, which may be withheld at TBG's sole discretion. Should a representative of TBG be subpoenaed to appear or produce documents by any party to such a dispute, Client agrees in advance to compensate TBG for its time and expenses incurred in compliance.

Guaranty of Certifications

Unless specifically provided for elsewhere in the Agreement, TBG makes no warranties representations or guarantees that the Project will actually achieve or receive any certification by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System of the U. S. Green Building Council, or any other similar state, local or national environmental building program. Similarly, unless otherwise provided for in the Agreement, TBG makes no warranties, representations or guarantees regarding the energy use or operating costs or expenses of the Project.

Instruments of Service

The drawings, specifications, computer files, electronic media, field data, notes and other documents prepared by TBG for the Project, including those prepared through or with its independent professional associates and/or consultants, are Instruments of Service for use solely with respect to this Project. TBG shall be deemed the author or creator of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. All Instruments of Service produced by TBG shall be released to Client as Adobe PDF files, and not in the native format available through programs including, but not limited to, InDesign, AutoCAD or other proprietary formats.

By entering into the Agreement, TBG grants to Client a limited, non-exclusive license to use the Instruments of Service provided to Client for purposes of constructing, using, and maintaining the Project, provided that Client substantially performs its obligations

under the Agreement, including prompt payment of all sums when due, under the Agreement. In the event of nonpayment by Client of any sums due for more than sixty (60) days, this license shall automatically terminate. The license provided under the Agreement does not extend to the use of TBG's Instruments of Service on any other project and does not grant Client any rights in the Instruments of Service or other documents or files that is not expressly granted to Client in writing, including, without limitation, rights to TBG's electronic files used in the development of the Instruments of Service, such as AutoCAD or InDesign files.

Upon completion of the services and payment in full of all monies due TBG, Client may retain copies of the Instruments of Service provided under the Agreement. Such documents, in whatever format provided, are neither licensed for, nor intended or represented to be suitable for, reuse on extensions of the Project or on any other project. Additionally, any reuse or distribution of such documents without written verification or adaptation by TBG for the specific purpose intended (for which Client shall pay TBG compensation at mutually agreed rates) will be at Client's sole risk and without liability or legal exposure to TBG, or TBG's independent professional associates or consultants.

CLIENT AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS TBG, ITS INDEPENDENT PROFESSIONAL ASSOCIATES AND CONSULTANTS, FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, FEES, LOSSES, CLAIMS, DEMANDS, LIABILITIES, SUITS, REGULATORY OR OTHER ACTIONS, AND DAMAGES, WHATSOEVER, ARISING OUT OF OR RESULTING FROM SUCH UNAUTHORIZED USE OR DISTRIBUTION.

Revised Project Budget

If the Project budget defined by the Scope of Services is increased or decreased by more than ten percent (10%) after the Schematic Design task, the time and effort required to redesign the Project within the new budget will be considered Additional Services to the Agreement. TBG does not guarantee the accuracy of estimates of cost and Client agrees TBG does not have control over the cost of labor, material, equipment, or services furnished by others, market conditions, or contractors' methods of determining prices or performing the work.

Statements and Payment

Fees for professional services and reimbursable expenses will be invoiced to Client monthly based on the percentage of the work completed for each task. A task-by-task description of work performed will be submitted with each invoice, at Client's request. Payment is due on or before 30 days from the date of the invoice. Client agrees to pay invoices or their undisputed portions on or before the due date. TBG reserves the right to suspend services in the event that invoices exceeding a total amount of \$5,000 remain unpaid for more than thirty (30) days, regardless of the reason.

In the event TBG's invoices are given to an attorney for collection or should TBG seek collection through any form of judicial process, Client shall pay all costs of collection, including but not limited to attorney's fees, expenses, and costs of court.

Suspension and Termination

Client may suspend or terminate the Agreement upon written notice to TBG, in which event, Client shall compensate TBG for all work performed by TBG prior to and including the date TBG receives written notice of said suspension or termination (the date of suspension/termination). TBG is not obligated to resume work following suspension of the work unless Client has paid all outstanding TBG invoices in full.

CLIENT AGREES TO RELEASE, INDEMNIFY, DEFEND, AND HOLD TBG HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM SUCH SUSPENSION.

If Client terminates the Agreement and TBG's services do not continue through the completion of the Project for any reason, Client shall be permitted to use the Instruments of Service (including any electronic files) prepared by TBG and provided to Client, only under the following conditions:

CLIENT SHALL (AND SHALL REQUIRE ANY OTHER DESIGN PROFESSIONALS ENGAGED TO COMPLETE THE IMPROVEMENTS ON THE PROPERTY TO) RELEASE , INDEMNIFY, DEFEND AND HOLD HARMLESS TBG, ITS INDEPENDENT PROFESSIONAL ASSOCIATES, AND ITS CONSULTANTS FROM ANY AND ALL LOSSES, CLAIMS, EXPENSES OR LIABILITIES ARISING FROM (I) THE USE OF TBG'S INSTRUMENTS OF SERVICE AS MAY BE USED, REVISED AND/OR ALTERED AND (II) THE COMPLETION OF THE IMPROVEMENTS ON THE PROPERTY; AND

TBG and its Sub-Consultants have been paid in full for services, materials, expenses, and reimbursables provided through the date of termination. This event does not change the respective ownership and use rights of TBG and Client in the Instruments of Service that are otherwise set forth in the Agreement.

TBG may terminate the Agreement upon ten (10) days' written notice to Client after the occurrence of any of the following:

- Client's failure to pay TBG's invoices within thirty (30) days;
- Suspension of the Project for more than sixty (60) days;
- Client's material default of any terms of the Agreement; or
- Client's failure to execute the Agreement.

LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES

TBG will not be responsible for defects in the work designed or built by others, even to the extent used or relied upon by TBG in rendering its services. TBG will not be responsible for incidental, indirect, or consequential damages, either to Client or to other members of the Design Team and construction team including, without limitation damages for delay or for construction inefficiencies for any cause whatsoever, loss of use, loss of profits, loss of income and/or rent, loss of reputation, unrealized savings, rental expenses, or diminution of property value. In consideration of the nature of TBG's work and the relative risks involved, the parties agree that in no event shall TBG be liable for damages to client, its assignees, other consultants, the contractor and/or its subcontractors for any claims or damages in excess of the amount of the fees paid to TBG by client.

INDEMNIFICATION

CLIENT AGREES TO INDEMNIFY, DEFEND, AND HOLD TBG AND ITS PRINCIPALS, REPRESENTATIVES, OWNERS, AGENTS, EMPLOYEES AND CONSULTANTS HARMLESS FOR ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES AND EXPENSES, ARISING FROM ANY INTENTIONAL OR NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF CLIENT AND/OR CLIENT'S OWNERS, PRINCIPALS, AGENTS, REPRESENTATIVES, EMPLOYEES, INDEPENDENT CONTRACTORS, AND CONSULTANTS, PERTAINING TO THIS AGREEMENT OR THE PROJECT.

Dispute Resolution

As a condition precedent to either the Client or TBG's filing of any claim in litigation, the President of TBG and Client shall meet within thirty (30) days of a request by either party to attempt to resolve the dispute. If any disputed issues remain, the parties agree that they must participate in nonbinding mediation before either party may institute any litigation or arbitration proceeding. In the event of a dispute, except as otherwise provided in this Agreement, neither TBG nor Client shall be entitled to an award of attorneys' fees. Venue for any dispute arising out of the services provided by TBG under the Agreement shall be in state court in Travis County, Texas. Any applicable statute of limitations shall commence to run, and any cause of action shall be deemed to have accrued, not later than the date of substantial completion of the Project on which TBG's services are provided.

Enforcement

The laws of the State of Texas shall govern the validity and interpretation of the Agreement. In the event any provision in the Agreement is found to be illegal or otherwise unenforceable, the unenforceable provision will be stricken and the remaining provisions shall continue in full force and effect as if the unenforceable provision were never included in the Agreement. Headings are for organizational purposes and may not reflect the full scope of the language that follows. The failure of a party to enforce any provision herein shall not waive that party's right to enforce the same provision or any other provision of the Agreement in the future.

Design-Build Projects Addendum

Client understands and acknowledges that as a method of delivery, Design-Build projects, which include any project or portion thereof for which the method of delivery consists of design and construction services provided under a single entity, present access, accountability, and timing complications related to TBG's Scope of Services; therefore, in consideration of this added risk and TBG's willingness to participate in a design-build method of delivery, Client acknowledges and agrees to the following additional terms with regard to Design-Build projects:

- TBG owes a duty only to Client under the Agreement, TBG's obligations do not flow to others with whom Client has contracted separately and there are no third-party beneficiaries to the Agreement;
- In advance of signing an agreement for services related to a design-build project, TBG will be provided, for review and consideration, the Prime Agreement between Owner and Design-Builder for the Project, as well as the Client's agreement for the design-build, if Client is not a party to the Prime Agreement. **IF TBG IS NOT PROVIDED THE PRIME AGREEMENT AND CLIENT'S AGREEMENT FOR THE**

DESIGN-BUILD, IF NOT THE PRIME AGREEMENT, IN ADVANCE OF TBG ENTERING INTO AN AGREEMENT FOR THE PROJECT WITH CLIENT, CLIENT AGREES TBG SHALL NOT BE LIABLE FOR COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED IN SAID AGREEMENTS AND CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD TBG HARMLESS FOR SAME;

- TBG will coordinate the work of it and its consultants with Client's other consultants but is not liable for the work of or delay caused by Design-Builder, Contractor, Subcontractors, other consultants, or any other party to the design-build team, or for any contractor's failure to perform its work in accordance with the contract documents or to begin construction before contract documents are complete;
- Client shall provide TBG complete information regarding TBG's portion of the work, and a schedule for TBG's work and allow TBG reasonable time to perform its work in coordination with other consultants on the Project. TBG is entitled to rely on the accuracy of the information provided by Client;
- Client will confer with TBG before issuing interpretations of TBG's documents and in determining whether construction performed based on TBG's documents is in general compliance with TBG's documents. If TBG is retained to provide construction administration responsibilities, any site observation reports generated by TBG, formal or informal, must be communicated promptly by Client to all members of the design-build team and to the project Owner.
- Nothing in the Prime Agreement or any downstream agreement shall be construed to transfer ownership of TBG's Instruments of Service to any party, as TBG maintains all common law, statutory and other reserved rights, including the copyright. As stated elsewhere in these Terms and Conditions, TBG grants only the limited, non-exclusive license to use the Instruments of Service provided to Client, in whatever format provided, for purposes of constructing, using, and maintaining only the Project that is the subject of the Agreement, and grants such license only on the condition that Client substantially performs its obligations under the Agreement, including prompt payment of all sums when due.
- Both TBG and Client agree not to assign the Agreement or any causes of action that arise under it without the express written consent of the other party.
- **INDEMNITY. CLIENT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TBG, AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, MANAGERS, BENEFICIARIES, EMPLOYEES, AGENTS, MEMBERS PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, INSURERS, AND SURETIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM ANY AND ALL DEMANDS, CLAIMS, ACTIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, LOSSES, LIABILITIES, ACTUAL DAMAGES, LIENS, JUDGMENTS, AND COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, COSTS OF DEFENSE, COURT OR ARBITRATION COSTS AND REASONABLE ATTORNEY'S FEES AND EXPENSES), TO THE EXTENT SUCH CLAIM CONFLICTS WITH THE CONDITIONS, RIGHTS, AND OBLIGATIONS STATED IN THE DESIGN-BUILD ADDENDUM, INCLUDING CLAIMS RELATED TO TBG'S OWN NEGLIGENT OR INTENTIONAL ACTS, IN WHOLE OR IN PART.**