

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into the 5th day of August 2021, by and between the CITY OF BENBROOK, TEXAS, hereinafter referred to as “CITY” and BROADDUS & ASSOCIATES, hereinafter referred to as “CONSULTANT”.

WHEREAS, CITY desires CONSULTANT to perform certain work and Services set forth in Scope of Services, marked Exhibit “A”, and attached hereto and incorporated herein.

WHEREAS, the CONSULTANT has expressed a willingness to perform said work and Services, hereinafter referred to only as “Services”, specified in said Scope of Services, and enumerated under Article II of this Agreement.

NOW, THEREFORE, all parties agree as follows:

ARTICLE I **GENERAL**

CONSULTANT shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all Services set forth in Article II hereof for the CITY in accordance with the terms, conditions and provisions of the Scope of Services, marked Exhibit “A”, and attached hereto and incorporated herein for all purposes. CITY may, at any time, stop any Services by the CONSULTANT upon giving CONSULTANT written notice. CONSULTANT shall be bound to CITY by the terms, conditions and responsibilities toward the CITY for CONSULTANT’S Services set forth in this Agreement.

ARTICLE II **SERVICES**

A. The following Services, when authorized in writing by a Notice to Proceed, shall be performed by the CONSULTANT in accordance with CITY requirements:

PERFORMANCE OF THE “**GENERAL CONSULTING SERVICES**” DESCRIBED IN THE SCOPE OF SERVICES MARKED EXHIBIT “A”.

B. CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all Services furnished by CONSULTANT under this Agreement. CONSULTANT shall perform all Services according to the standard of care pursuant to Texas Local Government Code § 271.904 (d) (1-2). CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in Services.

C. Neither CITY review, approval or acceptance of, nor payment for any of the Services required under this Agreement, shall be construed to operate as a waiver if any rights under this Agreement or if any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT’S negligent performance of any of the Services furnished under this Agreement.

D. The rights and remedies of CITY under this Agreement are as provided by law.

ARTICLE III **PAYMENT**

A. CITY shall pay CONSULTANT on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing.

B. Payment will be as stipulated in Exhibit “B” attached hereto and incorporated herein, provided that the total maximum fee shall not exceed **\$356,991.00** without prior authorization by the CITY.

C. Upon complete performance of this Agreement by CONSULTANT and final approval and acceptance of CONSULTANT’S Service by CITY, CITY will make final payment to CONSULTANT of the balance due under this Agreement within thirty (30) days of the following month after final payment for such Services has been billed by CONSULTANT.

D. CITY may deduct from any amounts due or to become due to CONSULTANT any sum or sums owing by CONSULTANT to CITY. In the event of any breach by CONSULTANT of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against CITY, or the CITY’S premises, arising out of CONSULTANT’S performance of this Agreement, CITY shall have the right to retain out of any payments due or to become due to CONSULTANT an amount sufficient to completely protect the CITY from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by the CONSULTANT.

ARTICLE IV **TIME FOR PERFORMANCE**

CONSULTANT shall perform all Services as provided for under this Agreement in a proper, efficient and professional manner in accordance with the CITY’S requirements. Both parties have agreed to the provisions of this Agreement in anticipation of the orderly and continuous progress of the project through completion of the Scope of Services specified in Exhibit “A”, attached hereto. CONSULTANT’S Services shall be performed in compliance with Texas Local Government Code § 271.904 (d) (1-2).

ARTICLE V

DOCUMENTS

A. All instruments of Service prepared under this Agreement shall be submitted for approval of the CITY.

B. Such documents of Service, together with necessary supporting documents, shall be delivered to CITY, and CITY shall have unlimited rights, for the benefit of CITY, in all instruments of Service, including the right to use same on any other work of CITY without additional cost to CITY.

C. CONSULTANT agrees to and does hereby grant to CITY a royalty-free license to all such instruments of Service which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. CONSULTANT, after completion of the project, agrees to furnish the originals of all such instruments of Service to the CITY.

ARTICLE VI **TERMINATION**

A. CITY or the CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the CONSULTANT or CITY, whichever applies. In the event suspension or termination is without cause, payment to the CONSULTANT, in accordance with the terms of this Agreement, will be made on the basis of Services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.

B. Should the CITY require a modification of its contract with CONSULTANT, and in the event CITY and CONSULTANT fail to agree upon a modification to this Agreement, CITY or the CONSULTANT shall have the option of terminating this Agreement. Payment to

CONSULTANT shall be made by the CITY in accordance with the terms of this Agreement, for the Services mutually agreed upon by the CITY and the CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

ARTICLE VII **INSURANCE**

A. CONSULTANT shall provide and maintain Workers Compensation with statutory limits.

B. CONSULTANT shall provide and maintain in full force and effect during the time of this Agreement, auto insurance (including, but not limited to, insurance covering the operation of owned and non-owned automobiles, trucks and other vehicles) protecting CONSULTANT and CITY as an additional Insured with limits not less than 250/500/100,000.

C. CONSULTANT shall provide general Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than One Hundred Thousand Dollars (\$100,000.00). The general Liability Insurance must name the CITY as an additional insured.

D. CONSULTANT shall also provide and maintain Professional Liability Insurance coverage to protect CONSULTANT and CITY from liability arising out of the performance of professional Services, if any, under this Agreement. Such coverage shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Such insurance shall be kept in effect for four years after the completion of the contract. If CONSULTANT fails to maintain the insurance covered during that

time, CITY may pay the premiums to keep the insurance in effect and recover the cost from CONSULTANT.

E. A Certificate of Insurance, satisfactory to CITY, showing compliance with the requirements of this Article shall be furnished to CITY before any Services are performed. CONSULTANT shall provide thirty (30) days written notice to CITY prior to the cancellation or modification of any insurance referred to herein.

ARTICLE VIII **INDEMNIFICATION FOR INJURY AND PERFORMANCE**

CONSULTANT further specifically obligates itself to CITY in the following respects, to-wit:

The CONSULTANT hereby agrees to indemnify and hold harmless the CITY, their officers, agents, servants and employees (hereinafter individually and collectively referred to as “Indemnitees”), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, reasonable attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of the CONSULTANT, its officers, employees, servants, agents or subcontractors, or anyone else under the CONSULTANT’S direction and control, and arising out of, resulting from, or caused by the negligent performance or failure of performance of any work or Services called for by this Agreement, or from conditions created by the performance or non-performance of said work or Services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, the CONSULTANT shall be

obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

The CONSULTANT is not responsible for the actions of the CITY'S contractor to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of the final plans by the CITY shall not constitute nor be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawing and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by CONSULTANT, its employees, contractor, agents and consultants.

ARTICLE IX **ASSIGNMENT**

CONSULTANT shall not assign or sublet this Agreement or any part thereof, without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT shall be construed as an assignment.

ARTICLE X **APPLICABLE LAWS**

CONSULTANT shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes, including the Americans with Disabilities Act, relating or applicable to Services to be performed under this Agreement.

This Agreement is performable in the State of Texas and shall be governed by the laws of the State of Texas. Venue on any suit hereunder shall be in Tarrant County, Texas.

ARTICLE XI
DEFAULT OF CONSULTANT

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by CITY to CONSULTANT, CITY may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. In the event of such termination, CITY may proceed to complete the Services in any manner deemed proper by CITY, either by the use of its own forces or by resubmitting to others. In either event, the CONSULTANT shall be liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services herein provided for and the costs so incurred may be deducted and paid by the owner out of such monies as may be due or that may thereafter become due to CONSULTANT under and by virtue of this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of the CONSULTANT.

ARTICLE XII
ADJUSTMENTS IN SERVICES

No claims for extra Services, additional Services or changes in the Services will be made by CONSULTANT without a written agreement with CITY prior to the performance of such Services.

ARTICLE XIII
EXECUTION BECOMES EFFECTIVE

This Agreement will be effective upon execution of the contract by and between CONSULTANT and CITY.

ARTICLE XIV
AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

ARTICLE XV
GENDER AND NUMBER

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely.

ARTICLE XVI
NOTICES AND AUTHORITY

A. The CONSULTANT agrees to send all notices required under this Agreement to City Manager, City of Benbrook, 911, Winscott Rd, Benbrook, Texas 76126. The CONSULTANT understands that only the City Manager or his designee has the authority to represent the CITY or bind the CITY under this Agreement.

B. The CITY agrees to send all notices required under this Agreement to the CONSULTANT at: Broaddus & Associates, 1301 S. Capital of Texas Hwy., Ste. A302, Austin, Texas 78746.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the 5th day of August 2021.

CITY:

CONSULTANT:

_____ *S. Sanders*

By: _____

By: Scot T Sanders, PE _____

Title: _____

Title: C.O.O. _____
Broaddus & Associates

**City of Benbrook
General Consulting Services**

**Exhibit A
Scope of Services**

The purpose of this agreement is to provide an opportunity for the City to utilize the Services of the CONSULTANT as an extension of the staff.

The following general service tasks outline the potential Services that may be provided through this agreement.

**City of Benbrook
General Consulting Services**

Exhibit B

Fees

Invoicing

CONSULTANT may submit invoices for Services rendered no more frequently than monthly, accompanied by an explanation of the Services provided and any necessary supporting documentation.