

Master Services Agreement

March 23, 2020

Mr. David Hawes, EDC Director
City of Mineral Wells

Via email

**Project: City of Mineral Wells – Master Services Agreement
Mineral Wells, Texas**

Dear Mr. Hawes:

We are pleased to present this agreement outlining the terms and conditions for the Landscape Architectural services to be provided by MESA Design Associates, Inc. (MESA) for the Mineral Wells Tax Increment Reinvestment Zone No. 2, and the City of Mineral Wells (Client). All services associated with this Master Services Agreement shall be conducted by Task Order.

The scope and fee for each specific Task Order will be unique to the complexity of the program and the need for coordination with specialty consultants. The final determination of each phase's scope and fees will be discussed with the Client and the project team and covered under a separate Scope and Fee Agreement. The Scope and Fee agreement for each Task Order will include a not to exceed amount, which includes an estimate for reimbursable expenses, in addition to the established fee.

Terms and Conditions:

1. The client will provide the following and MESA has the right to rely on this information and rely on any information provided by others:
 - a. Boundary and general survey locating structures, geotechnical, utility location (SUE), property lines, utilities that cross the property and other background information in AutoCAD format.
 - b. Soils Report (if required).
 - c. Budgetary Considerations.
2. Not included are the following:
 - a. Engineering design of vehicular paving improvements.
 - b. Utilities (water, sewer, storm, electrical, cable, telephone, etc.) and tenant connections/utility appurtenances.
 - c. Civil, structural, mechanical, irrigation and electrical engineering
 - d. Architect or lighting design and associated consultant fees.
 - e. Coordination with jurisdictional authorities (TCEQ, etc.).
 - f. Landscape lighting electrical plans.
 - g. Design of new or additional elements added to the scope of work or any related off-site improvements.
 - h. Redesign of elements due to site plan changes (i.e., buildings relocated, site grading changes).
 - i. Geotechnical information.
 - j. Water feature design consultant including MEP and structural engineering.
 - k. Illustrative plans, models and drawings not specifically described in the Basic Scope of Services
 - l. TDLR Submittal.
 - m. As-Built Drawings
 - n. 3-D graphics of any kind, including presentation videos or design study models
 - o. On-Site Construction Management.
 - p. Site Safety, Operations or Maintenance.
 - q. Any and all Jurisdictional Submittal, Permitting or Review Fees.
 - r. Selection of subcontractors
 - s. Sourcing of construction materials (including masonry stone, plant material, etc.)
 - t. Other products and services requested by the Client and not specifically described herein.

3. MESA Design Associates may subcontract consultants in the performance of any services described in this agreement.
4. MESA Design Associates does not act as General Contractor in any way, or accept responsibility for poor craftsmanship.
5. **The above-described compensation for MESA Design Associates does include an estimate for the following non-labor costs:**
Reimbursables:
 - a. Copies/plotting
 - b. Binding
 - c. Printing/reprographics
 - d. Photography
 - e. Federal Express, courier and/or delivery fees
 - f. Mailing/Postage
 - g. Blue printing, printing or binding for bid sets
 - h. Conference calls
 - i. Mileage (percentage allowed by IRS) currently @ .575/mi.
 - j. Permits and/or registration fees
 - k. Travel expenses outside of Dallas such as airfare and lodging
 - l. Other products and services requested by the Client and not specifically described herein.
 - m. Any and all Jurisdictional Submittal, Permitting or Review Fees.
 - n. TDLR Fees and Expenses.
6. Should the Client or Owner cancel scheduled meetings with less than 72 hours' notice, MESA reserves the right to invoice the Client or Owner for all related National and International travel and accommodation expenses incurred.
7. Either Party may terminate this contract with (7) seven days written notice to the other party. Upon termination, MESA will be paid for all work performed, including reimbursable expenses, through the date of termination.
8. Should this project, under a specific task order, go "on hold" for more than sixty (60) days, the Consultant reserves the right to charge a \$600.00 restart fee when the project resumes. MESA's fees for the remaining services and the time schedules shall be equitably adjusted.
9. This agreement is to be governed by the laws of the State of Texas. Compensation for all services shall be paid in Dallas, Dallas County, Texas.
10. In the event disputes are not satisfactorily resolved through informal discussions, the Client and MESA agree that all disputes between them arising out of or relating to this agreement or the Project shall be submitted to nonbinding mediation. In the event the parties to this agreement are unable to reach a settlement through mediation, then such disputes shall be settled by litigation, in a court of competent jurisdiction.
11. **Invoice Terms:** Net thirty (30) days from invoice date. A finance charge of 1% per month (12% per annum) will be added to accounts over thirty (30) days past due. Client agrees to pay reasonable attorney's fees incurred by MESA to collect on unpaid invoices. MESA reserves the right to file a property lien if invoices go over sixty (60) days past due.
12. If the client fails to make payments to MESA in accordance with this agreement, such failure shall be considered substantial non-performance and cause for termination or, at MESA's option, cause for suspension of performance of service under this agreement. If MESA elects to suspend service, prior to suspension of services, MESA shall give seven (7) days written notice to the Client. In the event of a suspension of services, MESA shall have no liability to the Client for delay or damage caused to the Client because of such suspension of services. Client agrees to hold MESA harmless and completely indemnify MESA from and against any and all damages, costs, attorney's fees, and/or other expenses which MESA may incur as a result of any claim by any person or entity arising out of such suspension of work. Before

resuming services, MESA shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of MESA's services. MESA's fees for the remaining services and the time schedules shall be equitably adjusted.

13. The hourly rates and multiples for services of the Consultant and Consultant's sub consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices annually or as agreed upon between the Client and Consultant. MESA reserves the right to adjust hourly-based contracts and additional service fees to compensate for inflation increases annually.
14. The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Landscape Architects in Texas. Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337; tele: 512.305.9000; fax: 512.305.9005; e-mail: www.tbae.state.tx.us.
15. **LIMITATION OF LIABILITY: to the maximum extent permitted by law, the Client agrees to limit MESA's liability for the Client's damages to two times the fees indicated in this proposal. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.**
16. By making visits to the site, MESA is not assuming the responsibilities of the builder, Construction Manager, Construction Superintendent or any of their agents or subcontractors.
17. Plans, drawings and specifications or other writings or documents prepared or provided by MESA hereunder are prepared for the specific task order only, but may be used by MESA for purposes of illustrating the scope and nature of project involvement. MESA shall provide Client with a reproducible set of drawings and specifications for its records. They shall not be used by Client for other projects or extensions to the project without the express written permission of MESA. MESA shall retain ownership of all videos, reports, drawings, plans, specifications, electronic files, field data, notes and other documents and instruments prepared by MESA as instruments of service for this specific task order with the understanding that, where appropriate and agreed upon by both parties or noted within a specific task order, the Client shall have access to said instruments. The Client shall retain ownership of all final videos, reports, drawings, plans and specifications in PDF format where applicable. All MESA materials used by the City shall retain the MESA Logo. MESA shall retain all common law, statutory and other reserved rights, including, without limitation, all copyrights thereto.
18. It is expressly understood and agreed that MESA shall not have control of, or charge of, or be responsible for construction, means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Project or for the acts or omissions of any contractor, subcontractor or other persons performing work for the Project and Client shall indemnify MESA and hold MESA harmless from and against any and all claims, demands, losses, costs, third party beneficiaries, liabilities and damages including, without limitation, reasonable attorney's fees and expenses, incurred by MESA and arising out of or related to any of the aforesaid.
19. Notwithstanding any other provision of this Agreement, MESA and MESA's sub consultants shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, mold, polychlorinated biphenyl (PCB) or other toxic substances.
20. The Client agrees to waive consequential damages for claims, disputes or other matters in question arising out of or relating to this agreement.
21. Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either MESA or the Client. MESA's services under this agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against MESA because of this agreement or the performance or nonperformance of services hereunder.
22. **The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless MESA, its officers, directors, employees and sub consultants (collectively, MESA) against all damages, liabilities or costs, including reasonable attorney's fees and costs, to the extent caused by the Client's negligent acts or**

breach of this agreement, and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and the use or modification by the Client to any reports, plans, specifications or other construction documents, including electronic files, prepared by MESA if such use or modification has not been explicitly approved in writing by MESA and its sub consultants. Neither the Client nor MESA shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence. This indemnification shall survive the termination of this Agreement.

23. If any term or provision of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, such holding shall be applied only to the provision so held, and the remainder of this Agreement shall remain in full force and effect.
24. This document super cedes all previous discussions and documents, if any, and may only be amended by written agreement between the parties.
25. In providing services under this Agreement, MESA shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.
26. Force Majeure. Any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party including, but not limited to, pandemics, disease, acts of God such as fires, hurricanes, floods or tornadoes.

27. ADDITIONAL SERVICES/HOURLY FEE SCHEDULE

Services requested, but not specifically included in the scope of services listed above, will be considered additional services (including but not limited to unforeseen site conditions, regulatory requirements, and/or changes to the design drawings to coordinate with design team members). Modifications to drawings, after approval by client, as a result of changes requested by client or other consultant will be considered additional services and billed at an hourly rate as follows:

Senior Principal	\$235.00
Principal	\$180.00
Associate	\$150.00
Senior Project Manager	\$120.00
Project Manager	\$100.00
Senior Designer	\$ 90.00
Designer	\$ 80.00
Marketing/Accounting/Administration	\$ 75.00
Intern	\$ 65.00

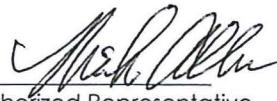
Respectfully Submitted,
MESA Design Associates, Inc.



Stan R. Cowan, ASLA
Senior Principal

Acceptance of Master Services Agreement:
Mineral Wells Tax Increment Reinvestment Zone No. 2

By:



Mark R. Allen
Authorized Representative



David Newman, ASLA
Associate

City of Mineral Wells



By: Randy Criswell, City Manager



Date: 7/6/2020