

THIS SERVICES AGREEMENT ("Agreement") is made with effect from _____, 2024 (the "Effective Date") by and between _____ a _____ [Corporation/Limited Liability Company] ("CLIENT"), and Spear Point Engineering, LLC (SPE), a Texas limited liability company ("ENGINEER") for High School Parking Expansion Paving and Drainage Project. CLIENT and ENGINEER hereinafter collectively referred to as the "Parties" and individually as a "Party."

RECITAL

ENGINEER is in the business of providing Professional Civil/Municipal Engineering Design Services, Client Representation, and Consulting Services to various industries and CLIENT has a need for the types of services provided by ENGINEER for its own purposes for the development and execution of its projects and related activities. The Parties agree as follows:

1. THE SERVICES

- 1.1 Attached hereto as Exhibit A is the Work Order, detailing the scope of services to be rendered by ENGINEER to CLIENT (the "Services"). The Work Order shall be subject to the terms and conditions of this Agreement, and all of the terms and conditions hereof shall be deemed incorporated into Work Order by reference and made a part thereof as if set out in full therein. This Agreement shall govern the rights, responsibilities, liabilities and obligations of ENGINEER and CLIENT with respect to any Services during the term hereof, regardless of whether a Work Order is issued.
- 1.2 The Work Order includes a schedule of agreed rates (the "Schedule of Rates") attached as Exhibit A attached hereto. The Schedule of Rates shall apply to the Work Order unless modified in writing by mutual agreement of the Parties.
- 1.3 If services are needed by CLIENT that are in addition to or different from the Services specified in the Work Order ("Supplemental Services") such Supplemental Services shall be expressly agreed by the Parties and shall be specifically set forth in a particular change order appended to the relevant Work Order (a "Change Order") and signed by the Parties.

2. COMPENSATION

- 2.1 For the Services to be performed pursuant to the Work Order, CLIENT shall pay ENGINEER in accordance with Exhibit B, the Schedule of Rates. ENGINEER may update the Schedule of Rates and submit such updated Schedule of Rates to CLIENT every 12 months, and upon such submission, the updated Schedule of Rates shall then apply to the Services set forth in the Work Order and any Change Orders.

3. PAYMENT

- 3.1 It is ENGINEER'S intention to bill Client on a monthly basis. CLIENT agrees to make payment in full of each of ENGINEER'S invoices within thirty (30) calendar days from the date of ENGINEER'S invoice. All amounts owed by CLIENT remaining unpaid when due shall incur and accrue interest at three percent (3%) per month until paid in full. All payments shall be made in United States Dollars.
- 3.2 Notwithstanding the above provisions, if payment is to be made on a lump sum basis (also known as flat fee basis), ENGINEER will invoice CLIENT for payments according to the schedule set forth in the Work Order or any Change Orders in proportion to the percent of completion of Services for the month covered by the invoice.
- 3.3 If CLIENT fails to make any payment due SPE for services and expenses within thirty (30) days after receipt of SPE'S invoice therefor, SPE may, after giving seven (7) days written notice to client, suspend services under this Agreement until SPE has been paid all amounts due for Services and expenses.

4. INDEPENDENT CONTRACTOR

- 4.1 Unless otherwise set forth in the Work Order, it is expressly understood and agreed that ENGINEER is an independent ENGINEER with respect to the performance of the Services with the authority to control and direct the performance of the details of the Services to be provided hereunder. Unless otherwise set forth in the Work Order or any Change, neither ENGINEER nor ENGINEER'S principals, partners, subcontractors, or the employees of any of the above shall be deemed to be an employee or act as agent or representative of CLIENT.

ENGINEER has the freedom and ability to contract with third parties to carry out its obligations under this agreement without prior approval by CLIENT. CLIENT hereby provides its consent to the preceding and agrees to pay all invoices of ENGINEER that include the work carried out by any such third parties.

5. MUTUAL INDEMNIFICATION

5.1 ENGINEER hereby agrees to indemnify and hold CLIENT harmless from and against all damages, losses, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by ENGINEER's and/or its employees', agents' or subcontractors' own negligent and/or wrongful actions, omissions, or the performance or failure to perform its obligations and duties under the terms of this Agreement.

5.2 CLIENT hereby agrees to indemnify and hold ENGINEER harmless from and against all damages, losses, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by CLIENT'S and/or its employees', agents' or subcontractors' own negligent and/or wrongful actions, omissions, or the performance or failure to perform its obligations and duties under the terms of this Agreement.

6. APPLICABLE LAW & VENUE

6.1 The laws of the State of Texas, exclusive of its principles of conflicts of laws, shall control the validity, construction and interpretation of this Agreement, the Work Order, and any Change Orders.

6.2 Venue for any dispute under this Agreement, the Work Order, or any Change Orders shall lie in Montgomery County, Texas.

7. NOTICES

7.1 All notices, requests, directions, or other communications permitted or required hereunder (collectively "notices") shall be in writing and shall be delivered to the appropriate Party at the address and/or email address following their signature block, or any other address notified in writing by a Party to the other.

8. TERM AND TERMINATION

8.1 This Agreement, and associated fees are valid for 60 days from the Effective Date on page one. This agreement is considered executed once both parties have signed and continues in full force and effect until termination of this Agreement as set forth in Article 8.2.

8.2 CLIENT or ENGINEER shall have the right to terminate this Agreement or any Work Order at any time by giving fifteen (15) calendar days written notice to the other Party. In the event of any such termination, within thirty (30) calendar days after such notice, CLIENT shall pay to ENGINEER all sums earned and due to the ENGINEER hereunder up to the date of termination, and if terminated at the request of CLIENT, all fees, accrued time, and subcontractor work to the date of termination, including any time associated with data transfer. This Article 8 shall not be construed to limit the survival of any other provision that survives the termination of this Agreement by its express or implied terms.

9. FORCE MAJEURE

9.1 Any delays in or failures of performance by either Party shall not constitute default hereunder or give rise to any claims for damages, if and to the extent such delays or failures of performance are caused by occurrences of *Force Majeure*. For purposes of this agreement, "Force Majeure Event" means, with respect to a Party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this agreement (other than an obligation to pay money), on condition that Party uses reasonable efforts to do so. This includes, without limitation, any weather (including floods, hurricanes, and tropical storms), strike, union disagreement, riot, casualty, war, terrorist acts, civil disturbances, material and labor shortages, viruses, and pandemics (including COVID-19) acts of God, and/or any other cause beyond the parties' reasonable control. The Party experiencing *Force Majeure* shall notify the other Party with reasonable promptness of the existence

of any such *Force Majeure* and the probable duration thereof and shall provide the other Party from time to time with correct information concerning same.

10. OWNERSHIP OF INSTRUMENTS OF SERVICE

10.1 All drawings, specifications, computer files, field data, notes and other documents and instruments prepared by SPE as instruments of service shall remain the property of SPE. SPE shall retain all common law, statutory and other reserved rights, including copyright thereto. The CLIENT shall retain ownership of the final report.

11. MISCELLANEOUS

11.1 If any provision or portion of this Agreement or the Work Order shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such provision or portion of this Agreement or Work Order shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect and this Agreement, and the Work Order shall be construed as if such invalid or unenforceable provision or portion had never been contained herein.

11.2 No benefit or right accruing to either Party under this Agreement, the Work Order, or any Change Orders shall be waived unless the waiver is reduced to writing and signed by both Parties to this Agreement. The failure of either Party to exercise any of its rights under this Agreement or the Work Order shall in no way constitute a waiver of those rights, nor shall such failure excuse the other Party from any of its obligations under this Agreement or the Work Order.

11.3 This Agreement, the Work Order, and any Change Orders comprise the entire agreement between the Parties and supersedes all prior agreements, promises, correspondence, discussions, representations, and understandings, except those expressly set forth herein. No other agreements, promises, correspondence, discussions, representations, or understandings, either express or implied, unless set forth herein, are binding between the Parties. This Agreement, the Work Order, and any Change Orders may be modified only in writing signed by both Parties. Neither Party may assign any of its rights or delegate any of its obligations under this Agreement nor the Work Order nor any Change Orders without the other Party's prior written consent.


11.4 ENGINEER shall own all work product until such time until project is completed and/or all invoices are paid.

The duly authorized representatives of the Parties have executed this Agreement as evidenced by the following signatures.

CLIENT

ENGINEER

Name: _____
Title: _____
Address: _____
Email: _____
Phone: _____
Billing Email: _____
Date: _____
Signature: _____

Name: Jerry McCrorey
Title: President
Address: 604 W Worsham St. Ste. 100, Willis, TX 77378
Email: Jerry@spetexas.com
Phone: 936-256-2626
Date: 6/19/2024
Signature: 

SPEAR POINT ENGINEERING, LLC
604 W Worsham Street Ste 100
Willis, TX 77378

7005-01

Exhibit A
Scope of Services
Willis High School Parking Expansion
Paving and Drainage
6/19/2024

Item	Description	Basis	Fee
1 Final Design Services			
a.	<u>Civil Site Drawings</u> : Prepare civil site drawings to include grading design, drainage design, temporary erosion control plan, construction notes, and detail sheets for submittal to the City of Conroe.	Lump Sum	\$112,500
b.	<u>Drainage Report</u> : Prepare drainage calculations and reports for submittal to City of Conroe (includes future expansion).	Lump Sum	\$33,750
c.	<u>Detention</u> : Prepare detention design and submit to City of Conroe. Design to be included in construction plan set. Does not include pump station or structural design.	Lump Sum (if required)	\$40,500
Phase Sub-Total:			\$186,750
2 Construction and Bid Phase Services			
a.	Construction administration for onsite grading, drainage and roadway improvements. Includes review of pay estimates, RFI's, proposed change orders, and project closeout procedures. Includes coordination with City of Conroe and WISD.	Lump Sum	\$40,500
b.	Field project representative services and construction oversight (hourly estimate).	Hourly	\$36,000
Phase Sub-Total:			\$76,500
3 Sub-Consultant Services			
a.	<u>Topo & Boundary Survey</u> : Survey provided by West Belt Surveying. Does not include platting if required.	NIC	\$0
b.	<u>Tree Preservation, Landscape, and Irrigation Plans</u> : Provide tree analysis, planting plans, and irrigation plans (not required per meeting with City).	NIC	\$0
c.	<u>Soils Investigation</u> : To be provided by district.	NIC	\$0
Phase Sub-Total:			\$0
4 General Consultation & Coordination			

a. <u>Project Coordination</u> : Coordination with review agencies, client, and design firm for adjacent projects, pre-development meeting with the city, site visits, submittals, phone calls, and meetings.	Lump Sum	\$6,750
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	Phase Sub-Total:	\$6,750
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	Project Total:	\$270,000
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Notes:

- 1 Client is responsible for complying with all storm water pollution prevention requirements. SPE recommends consulting a storm water management specialist.
- 2 NIC denotes that the item is "Not In Contract" and is not included in this proposal.
- 3 These fees are presented in the understanding that the Client, if a public entity, has selected SPE for the project based on qualifications in accordance with state law and is not soliciting competitive proposals on professional services.
- 4 Scope of work excludes offsite utilities.
- 5 Jurisdictional review fees (of drawings) shall be paid by Client or reimbursed at Cost +10%.
- 6 Client will be notified of all changes in scope of work and/or changes in estimated fees.
- 7 Client or their representative shall be responsible for fire code submittals and approval.
- 8 The Client's architect will be responsible for registering and submitting the project to the Texas Department of Licensing and Regulation (TDLR) for the required Texas Accessibility Standards (TAS) review. If there is no architect for the project, SPE will have to register and submit the project as required by law. This service will be completed as an additional engineering fee plus TDLR registration, review, and inspection fees.

- 9 Client is responsible for any required tree preservation and landscaping plans.

SPE Initials:



Client Initials:



EXHIBIT B

**FEE SCHEDULE
January 2024**

Principal II	\$215
Principal I	\$200
Director	\$210
Professional Engineer III	\$190
Professional Engineer II	\$160
Professional Engineer I	\$150
Project Manager I	\$170
Land Planner	\$115
Engineer In Training IV	\$120
Engineer In Training III	\$115
Engineer In Training II	\$110
Engineer In Training I	\$105
AutoCAD Technician IV	\$125
AutoCAD Technician III	\$110
AutoCAD Technician II	\$100
AutoCAD Technician I	\$90
Construction Manager II	\$150
Construction Manager I	\$115
Field Project Rep II	\$85
Field Project Rep I	\$70
Administrative Support	\$70
Engineering Technician	\$35
In-House Plotting	\$5/Sheet
Mileage	IRS Rate

SPE Initials: 

Client Initials: