

**AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND
PROFESSIONAL FIRM**

This Agreement is made as of _____, 2018 (the “**Effective Date**”), by and between:

The Owner: The City of San Marcos, Texas

and

The Professional Firm: Schrickel, Rollins and Associates, Inc.

for

The Project: Design of Gary Sports Complex Adult Softball Complex, 218-221

Owner Standard Terms and Conditions: Parties have read and agree to be bound by the General Terms and Conditions found at <http://www.sanmarcostx.gov/DocumentCenter/Home/View/6608>.

Further;

The Owner and the Professional Firm agree as follows:

ARTICLE 1
PROFESSIONAL FIRM’S SERVICES

Professional Firm agrees to perform the services specifically described in **Exhibit 1** and all other professional services reasonably inferable from **Exhibit 1** and necessary for complete performance of Professional Firm’s obligations under this Agreement (collectively, “**Professional Firm’s Services**”). To the extent of any conflict between the terms in **Exhibit 1** and this Agreement, the terms of this Agreement shall prevail.

ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES

Professional Firm agrees to use Professional Firm's best efforts, skill, judgment, and abilities so as to perform Professional Firm's Services in an expeditious and timely manner consistent with professional standards of care and the orderly progress of the Project. Professional Firm shall at all times provide sufficient personnel to accomplish Professional Firm's Services in a timely manner. Professional Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Professional Firm’s obligations under this Agreement.

Professional Firm agrees to perform Professional Firm's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

Professional Firm's Services shall be reasonably accurate and free from material errors or omissions. Professional Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Professional Firm without any additional cost or expense to Owner.

Professional Firm shall designate a representative primarily responsible for Professional Firm's Services under this Agreement. The designated representative shall act on behalf of Professional Firm with respect to all phases of Professional Firm's Services and shall be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

The Professional Firm shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate. The fees for such insurance will be at the expense of the Professional Firm. The Professional Firm shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Professional Firm's professional liability insurance before commencement or continuation of performance of the services under this Agreement.

ARTICLE 3

THE OWNER'S RESPONSIBILITIES

The Owner shall provide the Professional Firm with a full description of the requirements of the Project.

The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Professional Firm and as reasonably necessary for the completion of Professional Firm's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

The Owner will review the Professional Firm's drawings, specifications and other documents of service produced by Professional Firm's in the performance of its obligations under this Agreement (collectively the "**Design Documents**") as required. Owner will notify Professional Firm of any design fault or defect in Professional Firm's Services or Design Documents of which Owner becomes aware.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Firm's Services.

The Owner designates Drew Wells, Assistant Director of Community Services, as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner's representative is listed below:

Drew Wells
Assistant Director of Community Services
401 East Hopkins
San Marcos, Texas 78666
Ph.: 512-393-8406
Email: dwells@sanmarcostx.gov

ARTICLE 4

OWNERSHIP AND USE OF DOCUMENTS

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Professional Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner's use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.

ARTICLE 5

DISPUTE RESOLUTION

If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Professional Firm agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Professional Firm will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

ARTICLE 6

PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7

MISCELLANEOUS PROVISIONS

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between Professional Firm and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

Assignment. This Agreement is a personal service contract for the services of Professional Firm, and Professional Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Applicable Law. The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

Independent Contractor. Professional Firm recognizes that Professional Firm is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Professional Firm or its employees with any benefits normally associated with employee status. Professional Firm will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

Family Code Child Support Certification. If State funds are being used in in the procurement of the services described in Exhibit A, pursuant to Section 231.006, Texas Family Code, Professional Firm certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270 and 808, Texas Government Code, Professional Firm certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 2252 Compliance. Section 2252 of the Texas Government Code restricts the Owner from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Professional Firm hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Professional Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Professional Firm shall not disclose any such confidential information, unless required by law. Professional Firm shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

Termination Due to Loss of Funding. If Owner funds are utilized to fund any part of this Agreement, the Professional Firm understands that those Owner funds for the payment for work performed by the Professional Firm under this Agreement have been provided through the Owner's budget approved by Owner Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Owner cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Professional Firm acknowledges and agrees that it will have no recourse against the Owner for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the Owner extends from October 1st of each calendar year to September 30th of the following calendar year.

Ethics Matters; No Financial Interest. Professional Firm and its employees, agents, representatives, and subcontractors have read and understand Owner's Ethics Policy available at <http://www.sanmarcostx.gov/380/Ethics>, and applicable state ethics laws and rules. Neither Professional Firm nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Professional Firm represents and warrants that no member of the City Council of San Marcos has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.

Mutual Waiver of Consequential Damages. In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

Texas Tax Code 171.1011(g)(3). Notwithstanding anything in this agreement and for the purpose of complying with Texas Tax Code 171.1011(g)(3), the City agrees to the following:

- (1) Prior to commencing performance under this Agreement, Professional Firm will provide the City with a list of proposed subconsultants, subcontractors, or agents to be used in Professional Firm's services under this Agreement. The City shall have the right to accept or reject the use of any subconsultant, subcontractor, or agent on the Professional Firm's list. Such acceptance or rejection shall be given within a commercially reasonable time from the date the Professional Firm delivers it. and;
- (2) Any payment made by the Owner to Professional Firm that includes fees payable to a subconsultant, subcontractor or agent of Professional Firm under this Agreement shall constitute an acceptance by the Owner of Professional Firm's use of any such subconsultant, subcontractor or agent of Professional Firm under this Agreement.

Limitation of Liability. In recognition of the relative risks and benefits of the Agreement to both the Owner and Professional Firm, to the fullest extent permitted under applicable law, Owner agrees that Professional Firm's total liability for any and all claims, losses, costs, damages, or expenses including, without limitation, reasonable attorneys' fees and costs, of any nature whatsoever, shall not exceed the Professional Firm's total fee under the Agreement. It is intended that this limitation of liability shall apply to any and all liability or cause of action, whether in contract, warranty, tort, or otherwise, however alleged or arising.

Force Majeure. Professional Firm shall have no liability for any delay caused by an event of force majeure, the Owner or any of its consultant's or contractors, or circumstances outside of its reasonable control.

Termination for Convenience. The Owner may terminate the Agreement at any time upon 30-calendar day's notice in writing to Professional Firm. Upon receipt of such notice, Professional Firm shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Professional Firm shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The Owner agrees to compensate the Professional Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:

If to Owner:	The City of San Marcos 630 East Hopkins San Marcos, Texas 78666 Attn: Purchasing Department lwilliams@sanmarcostx.gov or purchasingprojects@sanmarcostx.gov
With Copies to:	The City of San Marcos 630 East Hopkins San Marcos, Texas 78666 Attn: City Attorney's Office LegalInfo@sanmarcostx.gov
If to Professional Firm	Sanford P. LaHue, Jr., Vice President Schrickel, Rollins and Associates 1161 Corporate Drive West, Suite 200 Arlington, Texas 76006 slahue@sradesign.com

The parties may designate alternative persons or addresses for receipt of notices by written notice.

Changes in Service. If a Party requires a change or amendment to this Agreement or its Exhibits, the Parties agree to use the Authorization on Change in Services Form in Exhibit 2 to do so. The Authorization on Change in Services Form must be agreed to and signed by both Parties before any change to this Agreement is effective.

ARTICLE 8

REIMBUSABLE EXPENSES

Reimbursable Expenses are in addition to Compensation for Professional Firm's Services and include actual and reasonable expenses incurred by the Professional Firm, that are (i) outside the services listed in Exhibit 1; and (ii) solely and directly in connection with the performance of Professional Firm's Services. Such Reimbursable Expenses must be approved in writing by the Owner and may include the following:

Expense of transportation (coach class air travel only) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the State of Texas are not reimbursable unless expressly approved by the Owner in advance.

Fees paid for securing approval of authorities having jurisdiction over the Project.

Professional models and renderings if requested by the Owner.

Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Professional Firm.

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Professional Firm.

ARTICLE 9

ADDITIONAL SERVICES

Additional Services are services not included in the Professional Firm's Services and not reasonably inferable from Professional Firm's Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Professional Firm shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Professional Firm shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by Professional Firm pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 10

PAYMENTS TO PROFESSIONAL FIRM

Professional Firm shall present monthly Applications for Payment to the Owner detailing the Professional Firm's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Professional Firm shall submit payroll information, receipts, invoices and any other evidence of payment which Owner or its designated representatives shall deem necessary to support the amount requested.

Owner shall promptly review the Application for Payment and notify Professional Firm whether the Application is approved or disapproved, in whole or in part. Owner shall promptly pay Professional Firm for all approved services and expenses. For purposes of Texas Government Code § 2251.021(a)(2), the date performance of services is completed is the date when the Owner's representative approves the Application for Payment.

Owner shall have the right to withhold from payments due Professional Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of Professional Firm to perform its obligations under this Agreement.

ARTICLE 11

PROFESSIONAL FIRM'S ACCOUNTING RECORDS

Records of Professional Firm costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Professional Firm in writing. Professional Firm's records shall be kept on the basis of generally accepted accounting principles.

ARTICLE 12

INSURANCE

For services performed on Owner's premises, Professional Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation
Employer's Liability

Statutory Limits
\$1,000,000 each occurrence

Comprehensive General Liability	\$1,000,000 aggregate \$1,000,000 each occurrence
Comprehensive Auto Liability	\$1,000,000 aggregate \$1,000,000 each person
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Professional Liability	\$1,000,000

Professional Firm shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

Upon request Professional Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in **Exhibit 1**.

ARTICLE 13 **INDEMNITY**

Professional Firm shall hold Owner, The City of San Marcos, and its City Council, officers, agents and employees harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify Owner, and its City Council, officers, agents and employees, customers, agents, successors and assigns against any damage or claim of any type arising to the extent caused by the negligent or intentional acts or omission of Professional Firm, its employees, agents and/or assigns.

ARTICLE 14 **PROFESSIONAL FIRM'S COMPENSATION**

The Professional Firm's compensation for Professional Firm's Services shall be as follows:

Service Fees: The maximum fee for Professional Firm's Services per **Exhibit 3** shall not exceed two hundred sixty nine thousand, five hundred dollars and no cents (\$269,500.00).

Reimbursable Expenses: For Reimbursable Expenses approved by the Owner (ref. Article 8 and **Exhibit 3**), Professional Firm shall be compensated for the actual expense incurred by Professional Firm. Notwithstanding the foregoing, Owner's payment to Professional Firm for Reimbursable Expenses will not exceed a maximum of amount agreed upon in this Agreement and Exhibits without the prior written approval of the Owner.

Additional Services: The Professional Firm's Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

The Owner and Professional Firm have entered into this Agreement as of the Effective Date.

OWNER:

THE CITY OF SAN MARCOS

By: _____

Name: _____

Title: City Manager

Date: _____

PROFESSIONAL FIRM:

SCHRICKEL, ROLLINS AND ASSOCIATES, INC.

By: _____

Name: _____

Title: _____

Date: _____

Exhibits:

EXHIBIT 1 – Scope of Services and Deliverables

EXHIBIT 2 – Authorization of Change in Service Form

EXHIBIT 3 – Detailed Fee Schedule

EXHIBIT 4 – Project Schedule

EXHIBIT 1

Scope of Services and Deliverables

Gary Sports Complex

City of San Marcos Community Services

BASIC PROFESSIONAL SERVICES

- A. The Basic Professional Services for the **Pre-Design Phase** of the Project shall include the following:
1. Topographic Mapping;
 2. Geotechnical Investigation;
 3. Plat Survey including preparation of easement and/or right-of-way documents and any title searches required to identify easements and ownership;
 4. Data Acquisition of existing drainage and utility information from the City and Franchise Utility Agencies which will be included on plan and survey documents;
 5. Base Mapping based on the information collected. Base maps will be in a 22" x 34" sheet format and shall indicate property boundaries, topographic information and other existing features such as visible utilities; and
 6. Production of an electronically formatted Base Map.
- B. The Basic Professional Services for the **Schematic Design/Design Development Phase** of the Project shall include the following:
1. Meeting with City Staff members to refine current program facilities for the site and to outline specific desired elements over and above elements previously discussed resulting in a refined program of elements for the park for City approval;
 2. Schematic Plans which will incorporate the elements outlined in the project program. The Plan will be to scale, in color, and prepared in both presentation size and 11" x 17" for review and discussion;
 3. Meetings, as needed, with City to present and review plan;
 4. Refined plan based on comments received from the meeting and City Staff comments. The refined plan will be in CADD format and suitable for incorporating as a starting

point for preparation of construction drawings. The refined plan will be presented in presentation size and in 11" x 17" for review; and

5. Preliminary Opinion of Probable Construction Costs based on the selected plan. Architect/Engineer will prepare a preliminary opinion of probable construction cost for the proposed improvements and present these costs in a spreadsheet format.

C. The Basic Professional Services for the **Construction Document Phase** of the Project shall include the following:

1. Preparing the final Construction Documents and specifications based on the City's description of the project scope. The Construction Documents shall comply with all applicable requirements imposed by governmental authorities having jurisdiction over the Project and shall be sealed by licensed professionals;
2. Construction Documents and Plans shall include but not be limited to:
 - a. Existing Conditions and Removal Plans;
 - b. Construction Layout Plans and Details;
 - c. Site Grading Plans;
 - d. Paving and Jointing Plans and Details;
 - e. Landscape Plans and Details;
 - f. Irrigation Plans and Details;
 - g. Civil Plans and Details;
 - h. Architectural Plans and Details;
 - i. Structural Plans and Details;
 - j. Mechanical Plans and Details;
 - k. Electrical Plans and Details;
 - l. Plumbing Plans and Details;
 - m. City of San Marcos Standard Details and Notes;
 - n. Storm Water Pollution Prevention Plans and Details; and

- o. TDLR/ Independent provider review and inspection for ADA compliance;
 - 3. Meetings with the City, as needed, shall be included in this phase.
- D. The Basic Professional Services for the **Construction Bidding Phase** of the Project shall include the following:
 - 1. Assisting the City to establish a list of prospective bidders on the Project;
 - 2. Assisting the City in conducting the pre-bid meeting, assisting the City in bid opening at a designated City location and assisting the City in awarding and preparing contracts for construction; and
 - 3. Assisting the City in evaluating the bids and in determining the successful bid, if any. As such, Architect/Engineer shall review the low bidder's qualifications after bid opening and advise the City as to whether such bid should be accepted or rejected. If requested by the City, the Architect/Engineer shall notify all prospective bidders or contractors of the bid or proposal results.
- E. The Additional Professional Services for the **Construction Observation and Administration Phase** of the Project shall include the following:
 - 1. Providing administration of the Construction Contract;
 - 2. Providing representation, advice and consultation to the City. As such, Architect/Engineer shall have authority to act on behalf of the City but only to the extent provided in the Professional Services Contract;
 - 3. Visiting the Job Site at least an average of one time per month depending on the progress of the Work, or as otherwise agreed by the Director and Architect/Engineer in writing, to observe and become familiar with the progress and quality of the Work and to determine in general if the Work has been and is being performed in accordance with the Contract Documents. All such observations shall be performed in the presence of the Director or other City employee designated by the Director to attend such observations;
 - 4. Communicating with the City regarding the progress and quality of the contractor's Work, and promptly reporting to the City any defects or deficiencies in the Work which Architect/Engineer discovers as a result of Architect/Engineer's monthly observation visits to the Job Site. Architect/Engineer shall, at no cost to the City, promptly correct or cause to be corrected any defects or deficiencies in the documents of the professional

services caused by errors, defects or deficiencies of Architect/Engineer's work or services under the Professional Services Contract;

5. Reviewing and certifying the amounts due to the general contractor under the Construction Contract based on Architect/Engineer's observations of the Work and evaluations of the general contractor's applications for payment. The Architect/Engineer shall maintain a record of all of the general contractor's applications for payment and Architect/Engineer's certifications of payment and shall deliver to the City a copy of such record upon issuing the Final Certificate for Payment. The Architect/Engineer's certification for payment shall constitute a representation to the City, based on the Architect/Engineer's observations at the Job Site and on the data comprising the general contractor's application for payment that the Work has progressed to the point indicated to the best of the Architect/Engineer's knowledge, information and belief and that the Contractor is entitled to payment in the amount certified. However, the Architect/Engineer's issuance of certificates for payment shall not constitute a representation that the Architect/Engineer has reviewed the construction means, methods, techniques, sequences or procedures, or copies of requisitions received from subcontractors or suppliers, or that the Architect/Engineer has ascertained how or for what purpose the general contractor has used money previously paid on account of the Contract Sum, or that the Architect/Engineer has made exhaustive and continuous inspections to check the quality of the Work;
6. Recommending to the City the rejection of all or portions of the contractor's Work that does not, in the Architect/Engineer's opinion, conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require the general contractor to uncover or to perform additional inspection or testing of the Work, regardless of whether or not such Work is fabricated, installed or completed. However, the Architect/Engineer's duties and responsibilities under this Subsection (6) extend only to the City and shall not give rise to a duty or responsibility to the general contractor, or the subcontractors, suppliers, their agents or employees or any other persons performing portions of the Work;
7. Reviewing and approving or taking other appropriate action with respect to the general contractor's submittals to the City (such as shop drawings, product data or samples) for the purpose of determining whether or not the Work, when completed, will conform to the requirements of the Contract Documents. In doing so, the Architect/Engineer shall act with reasonable promptness and shall not cause delay in the progress of the Work. The Architect/Engineer's review of such submittals is not conducted for the purpose of substantiating instructions for the installation or performance of equipment or systems designed by the general contractor, which remains the responsibility of the general contractor to the extent required by the Contract Documents. Unless otherwise specifically stated by the Architect/Engineer, the Architect/Engineer's review of such submittals shall not constitute Architect/Engineer's approval of safety precautions,

construction means, methods, techniques, sequences or procedures utilized by the general contractor. Similarly, the Architect/Engineer's approval of a specific item shall not indicate the Architect/Engineer's approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents;

8. Reviewing written requests by the general contractor for additional information about the Contract Documents. The Architect/Engineer may require that such requests be in a form prepared or approved by the Architect/Engineer, but such form must include provision for a detailed written statement to be made referencing the specific drawings or specifications about which the request concerns and the nature of the information requested. If deemed appropriate by the Architect/Engineer, the Architect/Engineer shall prepare, reproduce and distribute, on the City's behalf, supplemental drawings and specifications in response to such requests;
9. Rendering written decisions within a reasonable time on all claims, disputes or other matters in question between the City and the general contractor relating to the execution or progress of the Work as provided in the Contract Documents. Interpretations and decisions of the Architect/Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings;
10. Providing the City with two sets of reproducible prints showing all significant changes known to or made by the Architect/Engineer to the Construction Documents during the Construction Phase. Other changes made by the Contractor and City's representative shall be provided to the Architect/Engineer for incorporation in the record drawings;
11. Conducting detailed observations on behalf of the City to determine the dates of substantial completion and final completion of the Project. When appropriate, the Architect/Engineer shall issue to the City a Certificate of Substantial Completion and a Certificate of Final Completion.
12. Coordinating final Job Site walk through with the City at the conclusion of the construction and providing the Punch List to the general contractor. Upon determining that the Work, including all items on the Punch List, is in full compliance with the requirements of the Contract Documents, the Architect/Engineer shall issue to the City a Final Certificate for Payment.
13. Reviewing all warranties, written guarantees and related documents required by the Contract Documents to be assembled by the general contractor and delivering such documents to the Director prior to or commensurate with issuing the Final Certificate for Payment; and

14. Receiving from the general contractor and forwarding to the City: (a) written consent of the surety or sureties, if any, prior to a reduction of or partial release of retainage or to the making of final payment; and (b) affidavits, receipts, releases and waivers of liens or bonds indemnifying the City against liens or other encumbrances.

EXHIBIT 2
AUTHORIZATION OF CHANGE IN SERVICE

AGREEMENT/ SERVICES NAME:		
CITY REPRESENTATIVE:		
CONTRACTOR:		
CONTRACT EFFECTIVE DATE:		
THIS AUTHORIZATION DATE:		AUTHORIZATION NO.:

DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:

Original Contract Amount:	NTE	\$
Previous Increases/Decreases in Contact Amount:	NTE	\$
This Increase/Decrease in Contract Amount:	NTE	\$
Revised Contract Amount:	NTE	\$

CONTRACTOR:

Signature

Date

Print Full Name / Title (if not in individual capacity)

CITY:

Signature

Date

Print Name

Title

City Department Use Only Below This Line (PM, etc.).

Account Number(s):		
#	{Date}	{Amount}
#	{Date}	{Amount}
#	{Date}	{Amount}

EXHIBIT 3

Detailed Fee Schedule
Gary Sports Complex
City of San Marcos Community Services

Basic Professional Services

- (a) The Supplemental Professional Services for the **Pre-Design Phase** of the Project: the stipulated sum of \$19,500.00.
- (b) The Basic Professional Services for the **Schematic Design/Design Development Phase** of the Project: The stipulated sum of \$62,500.00.
- (c) The Basic Professional Services for the **Construction Document Phase** of the Project: The stipulated sum of \$142,500.00.
- (d) The Basic Professional Services for the **Construction Bidding Phase** of the Project: The stipulated sum of \$7,500.00.
- (e) The Basic Professional Services for the **Construction Observation and Administration Phase** of the Project: The stipulated sum of \$37,500.00.

The Basic Design Fee amounts indicated in (b) thru (e) above are based on the following:

Schematic Design/Design Development	25%
Construction Documents	57%
Construction Bidding	3%
Construction Observation	15%

EXHIBIT 4

Project Schedule

Gary Sports Complex

City of San Marcos Community Services

(1) **Calendar.** For the purposes of this Contract, a month is defined as 30 calendar days and a week as 7 calendar days. If any of the deadlines for submissions fall on a holiday or other day when the City is closed, then the submission shall be due the following weekday.

(2) **Completion Deadline—Pre-Design Phase.** The duration of time required to complete the Pre-Design Phase shall not exceed 60 calendar days.

(3) **Completion Deadline—Schematic Design/Design Development.** The duration of time required to complete the Schematic Design/Design Development Phase shall not exceed 120 calendar days.

(4) **Completion Deadline—Construction Document Phase.** The duration of time required to complete the Construction Document Phase shall not exceed 180 calendar days.

(5) **Completion Deadline—Construction Bidding Phase.** The duration of time required to complete the Construction Bidding Phase is anticipated not to exceed 60 calendar days and is dependent upon the City's approval process and the construction contractor's progress on the Work.

(6) **Completion Deadline—Construction Observation and Administration Phase.** The duration of time required to complete the Construction Observation and Administration Phase is dependent upon construction contractor's progress on the Work.

Milestone Completion Dates for the phases indicated above will be calculated using the above completion durations (days) added to the Notice to Proceed Date once it is established.