

RESOLUTION NO. R-2023-105

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A PROFESSIONAL SERVICES CONTRACT WITH LUCK DESIGN TEAM LLC FOR A NOT-TO-EXCEED AMOUNT OF ONE HUNDRED AND TWELVE THOUSAND, TWO HUNDRED AND NINETY-NINE DOLLARS (\$112,299.00) FOR THE FAIRVIEW CEMETERY IMPROVEMENTS SECTION 9 DEVELOPMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, The City Council of the City of Bastrop, Texas previously received a presentation on the need for development in Section 9 of Fairview Cemetery on November 8, 2022; and

**WHEREAS**, Section 9 is undeveloped land, already owned by Fairview Cemetery, and estimated to add approximately 1,148 burial spaces available for sale; and

**WHEREAS**, The City has previously worked with Luck Design Team LLC on the planning of the undeveloped Section 9 of the Cemetery; and

**WHEREAS**, The City of Bastrop Fairview Cemetery Advisory Board recommends moving forward with engineering services for the Fairview Cemetery Improvements Section 9 Development. The funding is provided by the Cemetery Fund FY23.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:**

**Section 1:** That the City Manager is hereby authorized to execute the professional services contract with Luck Design Team LLC to conduct design and construction for the Fairview Cemetery Improvements Section 9 Development for a not to exceed amount of \$112,299.00.

**Section 2:** All, orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

**Section 3:** Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby severable.


**Section 4:** That this Resolution shall take effect immediately upon its passage, and it is so resolved.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 25<sup>th</sup> day of July 2023.

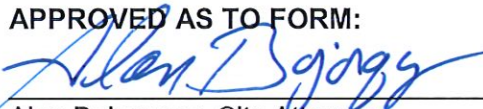
**APPROVED:**

  
\_\_\_\_\_  
Lyle Nelson, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney

**CITY OF BASTROP**  
**STANDARD CONTRACT FOR GENERAL SERVICES**

Over \$50K  
(8-16-2021)

This General Services Contract (“Contract”) is entered by and between the **City of Bastrop**, a Texas Home-Rule Municipal Corporation (the “City”), and **LUCK Design Team LLC**, acting by the “Engineer/Contractor”), and together with the City jointly referred to as the “Parties,” for the following work described on the Scope of Services, Exhibit A-2, attached and incorporated herein to this Contract (the “Work” or “Project” or “City of Bastrop Fairview Cemetery Improvements, Section 9 Development”).

**I. General Information and Terms.**

Engineer’s/Contractor’s Name and Address: LUCK Design Team LLC  
9600 Escarpment Boulevard, #745-4  
Austin, Texas 78749  
Attn: Brent Luck

General Description of Services: Professional design services for the City of Bastrop Fairview Cemetery Improvements, Section 9 Development.

Maximum Contract Amount: \$112,299.00

Effective Date: On the latest of the dates signed by both parties.

Termination Date: See II.D.

Contract Parts: This Contract consists of the following parts:

- I. General Information and Terms
- II. Standard Contractual Provisions
- III. Additional Terms or Conditions
- IV. Additional Contract Documents
- V. Signatures

**II. Standard Contractual Provisions.**

A. Contractor’s Services. The Contractor will provide to the City the professional engineering services (“Services”) described in the Scope of Services, Exhibit A-2 attached and incorporated herein to this Contract under the terms and conditions of this Contract.

B. Billing and Payment. The Contractor will bill the City for the Services provided at intervals

of at least 30 days of receipt of Contractor's invoices, except for the final billing. The City will pay the Contractor within 30 days of receipt of Contractor's invoices for the Services provided for in this Contract with current revenues available to the City, but all of the City's payments to the Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City shall have the right to withhold payment, or any part thereof, of any of invoice presented by Contractor until resolution providing reasonable verification of the correctness thereof of is reached. The City shall notify the Contractor, in writing, of the disputed amount within thirty (30) days. The City is not liable to the Contractor for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

C. Executed Contract. The "Notice to Proceed" will not be given nor shall any Services commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to this Contract.

D. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

- (a) On the termination date, if any, specified in the General Information in Part I, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or
- (b) If there is no termination date specified in the General Information in Part I, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City Manager may terminate this Contract during its term at any time for any reason by giving written notice to the Contractor not less than five (5) business days prior to the termination date, but the City will pay the Contractor for all Services rendered in compliance with this Contract up to the date of termination. The City may terminate the Contract anytime if the City does not have available funds pursuant to Texas Government Code Chapter 2251.

(3) If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution).

E. Delays. Contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of Contractor, an extension of time shall be the Contractor's sole remedy.

F. Independent Contractor. It is understood and agreed by the Parties that the Contractor is an



independent contractor retained for the Services described in the Scope of Services, Exhibit A-2, attached and incorporated herein. The City will not control the manner or the means of the Contractor's performance but shall be entitled to work product as detailed in the Exhibit A-2. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture. Services performed by the Contractor under this Contract are solely for the benefit of the City. Nothing contained in this Contract creates any duties on the part of the Contractor toward any person not a party to this Contract. No person or entity not a signatory to this Contract shall be entitled to rely on the Contractor's performance of its Services hereunder, and no right to assert a claim against the Contractor by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Contract or the performance of the Contractor's Services hereunder.

G. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

H. Assignment. The Contractor may not assign this Contract without the City's prior written consent.

I. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Bastrop County, Texas.

J. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

K. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

L. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

M. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY, INCLUDING



REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND COST IN PROPORTION OF CONTRACTOR'S LIABILITY, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, ERROR, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR ANYONE WHOM THE CONTRACTOR IS LEGALLY LIABLE FOR UNDER THIS CONTRACT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED, TREBLE (OR STATUTORY EQUIVALENT), OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK OR SERVICES PERFORMED OR TO BE PERFORMED HEREUNDER.

N. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON, AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, OR ALLEGED TO BE CAUSED BY, THE NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS..

O. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

P. Conflicting Provisions. If there is a conflict between a provision in the Contractor's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

Q. Documents and Data, Licensing of Intellectual Property, and Copyright. All Work progress and final documents and data produced by Contractor during the term of the Contract shall be and remain the property of the City. For purposes of this Contract, the term "Documents and Data" include any original work (the Work), reports, analyses, plans, drawings, designs, renderings, specifications, notes, summaries, charts, schedules, spreadsheets, calculations, lists, data compilations, documents, or any other material developed and assembled by or on behalf of the City in the performance of this Contract. It also includes any medium in which the Documents and Data are kept, including digitally, magnetically, or electronically. This Contract creates at no cost to the City, a perpetual license for the City to use any picture, video, music, brochure, writing, trademark, logo, or other work created by the Contractor for the use of the City, as a "work made

for hire” as defined by federal copyright law. The City, as the author and owner of the copyright to the Work, may alter, reproduce, distribute, or make any other use of the Work as it deems appropriate.

R. Standard of Care for Architects and Engineers. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

S. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov’t Code. Under the provisions of this statute:

(1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;

(2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission), attached and incorporated herein as Exhibit A-1, that includes:

(a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and

(b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

T. Compliance with Laws. The Contractor must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

U. Prohibition on Contracts with Companies Boycotting Israel. Certain contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov’t Code (H.B. 89, as amended by H.B. 793). Specifically, contracts for good and services that:

(1) are between the City and a company with ten (10) or more full-time employees; and

(2) have a value of \$100,000.00 or more that is to be paid wholly or partly from public funds of the City.



Under the provisions of this statute, if the above conditions apply the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

If this is a contract to which the verification requirement applies, the City has approved a verification form which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

### **III. Additional Terms or Conditions.**

#### **Insurance**

At all times this Agreement is in effect, Contractor shall maintain insurance of the types and amounts as those required in Exhibit B-1. All of Contractor's insurance policies in any way relating to the Work, whether or not required by this Agreement and regardless of the enforceability or validity of any of the indemnities or other assumptions of liability by Contractor, shall, to the full coverage limits of all such policies without any limitations based on the minimum requirements set forth above: (a) other than the worker's compensation insurance, name City Group as additional insureds on a broad form basis with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent; (b) provide for waiver of all rights of subrogation against City and the other members of City Group; and (c) be primary and noncontributory as to all other policies (including any deductibles or self-insured retentions) and self-insurance that may provide coverage to any member of City Group, and shall be fully applied and exhausted before application of any applicable indemnity obligations of City or of any applicable insurance coverage provided by City or any other member of City Group.

#### **A. Audit**

Contractor shall, and shall ensure that its affiliates, subsidiaries, contractors, subcontractors, consultants, agents, and any other person associated with Contractor including those in Contractor Group, keep full and accurate books and records with respect to all Work performed, and all payments and expenditures in connection with this Agreement. The records to be maintained and retained by Contractor Group shall include, without limitation, (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the Project, as well as canceled payroll checks or signed receipts for payroll payments in cash; (b) invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items; (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other Third Parties' charges, including, but not limited to, Equipment rental; (d) travel and entertainment documentation, including, but not limited to, employee expense



reports and Contractor facility usage reports; and (e) all field tickets or similar documentation evidencing the Work. The City shall have the right at all reasonable times, for a period of five (5) years from the completion of the Work, to audit and inspect such books and records (excluding trade secrets, formulas, confidential data, proprietary information, or processes).

**B. Reports of Incidents**


Within twenty-four (24) hours upon occurrence, Contractor shall provide in writing to the City notice and details of any accidents or occurrences resulting in injuries to persons, property, or pollution arising in any way arising out of or related to the Work whether done by Contractor or any subcontractor of Contractor or any other member of Contractor Group performing Work pursuant to this Contract. Contractor shall in writing within twenty-four (24) hours of any claim, demand, or suit that may be presented to or served upon it arising out of or as a result of Work.

**IV. Additional Contract Documents.** The following documents attached to this Contract are part of this Contract:

- EXHIBIT A-1: Certificate of Interested Parties (1295 Form)
- EXHIBIT A-2 Scope of Work
- EXHIBIT A-3 House Bill 89 Verification
- EXHIBIT B-1 Requirements for General Services Contract

**V. Signatures.**

**LUCK Design Team, LLC**  
  
By: \_\_\_\_\_  
Printed Name: Brent Luck  
Title: President  
Date: June 26, 2023

**CITY OF BASTROP**  
  
By: \_\_\_\_\_  
Printed Name: Sylvia Carrillo, ICMA-CM, CPM  
Title: City Manager  
Date: Aug 7, 2023

**EXHIBIT A-1**

Certificate of Interested Persons with Certification of Filing  
(Form 1295)

*(See Attached)*

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

LUCK Design Team  
Austin, TX United States

Certificate Number:  
2023-1038658

Date Filed:  
06/26/2023

Date Acknowledged:

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of Bastrop

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

City of Bastrop Fairview Cemetary  
City of Bastrop Fairview Cemetery Expansion Improvements

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



### 6 UNSWORN DECLARATION

My name is Brent Luck, and my date of birth is March 3, 1970.

My address is 11009 Ariock Lane, Austin, TX, 78739, USA  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of TX, on the 28th day of June, 2023.  
(month) (year)

Signature of authorized agent of contracting business entity  
(Declarant)

**EXHIBIT A-2**

Scope of Services **dated June 22, 2023**

*(See Attached)*





June 22, 2023  
Fabiola M. de Carvalho, AMP MIAM  
City of Bastrop  
1311 Chestnut Street  
Bastrop, Texas 78602

Re: City of Bastrop Fairview Cemetery Improvements, Section 9 Development  
located in Bastrop, Texas.

Dear Ms. Fabiola M. de Carvalho,

LUCK Design Team, LLC is pleased to submit the following proposal for professional services for the City of Bastrop Fairview Cemetery Improvements, Section 9 Development. We propose the following services:

**I. SCOPE OF SERVICES – CEMETERY EXPANSION MASTER PLAN**

A. Fairview Cemetery Tract Boundary Retracement

Luck Design Team sub-consultant will prepare a boundary retracement of the entire Fairview Cemetery Tract as shown on the 1997 plat prepared by LCRA.

B. Houston Toad Habitat Assessment

This task will be performed by Luck Design Team sub-consultant ecologists who are permitted by the U.S. Fish and Wildlife Service (USFWS) to conduct management and research for the Houston Toad (*Anaxyrus houstonensis*). Under this task our staff will conduct a thorough investigation of the history of Houston Toad occurrence within, and surrounding, the project area, and conduct a field visit to the site where no fewer than two biologists will walk the project area in search of Houston Toads, and their associated habitats. Costs associated with this task include research and report preparation, map production, one biological field visit, and mileage to and from the field site.

The property is located within Critical Habitat for the Houston Toad. Additionally, the project area is within 5 kilometers of previously

occupied ponds within Bastrop State Park, as well as previously occupied portions of Lake Bastrop, which indicates some likelihood that Houston Toads might occur here, or on the neighboring tracts.

Further investigations, such as remote auditory monitoring, nocturnal human performed auditory surveys, daytime upland surveys for metamorphosed juveniles, or aquatic searches for egg strands and tadpoles on the site are beyond this scope of services. If desired, these additional tasks, as well as continued annual monitoring, could be proposed as a subsequent phase of work.

C. Geotechnical Evaluation

The Luck Design Team sub-consultant will provide the City of Bastrop with a geotechnical soils investigation report for the improvements at the cemetery site. The report shall include:

- Seven (7) boring locations - 6' deep

Design recommendations for foundation, pavement and structural recommendations will be provided.

The LUCK Design Team sub-consultant will review the geotechnical reports and pavement design provided in the Geotech report.

D. Schematic Plan Development (30% Construction Document Completion)

LUCK Design Team and Luck Design Team sub-consultants will prepare Schematic Plans (30% completion of construction document preparation) for the City of Bastrop Fairview Cemetery Improvements, Section 9 Development illustrating general locations, sizes and relationships of improvements, materials and forms of construction, and proposed equipment for use in development of the cemetery facilities. The proposed improvements to be included are shown on the City of Bastrop Fairview Cemetery Expansion Materials Plan dated May 17, 2022 (Attachment A) and further described in Item "II – Client Responsibilities and Project Assumptions". These improvements will be shown within context of the topographic and boundary survey. Material cut-sheets as necessary to illustrate design characteristics of selected equipment, finishes and materials will also be included.

LUCK Design Team and LUCK Design Team sub-consultants will collaborate to prepare an opinion of probable construction costs for improvements and review schematic plans with City Staff and document their comments for use during preparation of design development plans.

LUCK Design Team will attend meetings with the City of Bastrop Staff for project review and coordination and to ensure master-planning intent of the improvements is carried into the early stages of the construction document preparation.

LUCK Design Team will attend a maximum of two (2) meetings with the City of Bastrop for project review and coordination.

E. Design Development (60% Construction Document Completion)

LUCK Design Team and LUCK Design Team sub-consultants will prepare Design Development Plans (60% completion of construction document preparation) for the City of Bastrop Fairview Cemetery Improvements, Section 9 Development illustrating general locations, sizes and relationships of improvements, materials and forms of construction, and proposed equipment for use in development of the cemetery facilities.

The design development plans will be prepared for City of Bastrop review and comment. The design team will finalize locations and configurations of site facility improvements and illustrate in digital form.

Design development site plans will identify types and size requirements of site elements including site amenities, access and circulation routes, pedestrian circulation routes, and irrigation improvements (mainline and quick coupling locations only). Design development plans will also coordinate site grading, wet utilities improvements, water quality improvements and landscape architectural improvements. Project phasing will be indicated on these plans, if applicable. Material cut-sheets as needed to illustrate the final designs proposed at the park will be provided.

Prepare final design development drawings incorporating the City's 60% plan comments and prepare and a revised opinion of probable construction costs (OPCC) for park improvements will also be prepared.

LUCK Design Team will attend a maximum of two (2) meetings with the City of Bastrop for project review and coordination.

F. Construction Documents Preparation (100% Construction Document oCompletion)

LUCK Design Team and LUCK Design Team sub-consultants will prepare all construction documents and specifications to allow bidding and construction of the proposed City of Bastrop Fairview Cemetery Improvements, Section 9 Development. The construction documents will include the proposed park improvement elements as indicated on the City of Bastrop Fairview Improvements, Section 9 Development Master Plan dated May 17, 2022 (Attachment A) and further described in Item "II – Client Responsibilities and Project Assumptions". Site layout plans with dimensional control information necessary to construct site improvements, including general roadway layout, site grading and drainage, general pedestrian walkways and gravesite location improvements, including the Columbaria will be provided.

The LUCK Design Team sub-consultant will design grading plans with vertical information necessary for construction. Site drainage and storm sewer plans with information necessary for construction will be provided with site details indicating specific information and data necessary for construction site improvements. Irrigation plans and details necessary for construction of the mainline and quick couplers will be provided as well. It is assumed that the water source for the irrigation will be from a metered potable water line.

Structural design of the columbaria slab and the shade covering over the columbaria is included in this scope of services.

On March 5, 2003, the National Pollution Discharge Elimination System (NPDES) permitting authority was transferred over to the Texas Commission on Environmental Quality (TCEQ). TCEQ's general permit (TPDES construction General Permit TXR 150000) combines large



construction activity (5 or more acres) and small construction activity (1 to less than 5 –acres) requirements for all projects in the state of Texas. The construction activity for the park is anticipated to be under five acres; therefore, this project falls under small construction activity requirements.

1. Luck Design Team sub-consultant will prepare an erosion control layout plan for the project, identifying locations of proposed erosion control measures and furnish to the City of Bastrop. The contractor must display the plan at the job site as part of his Storm Water Pollution Prevention Plan and update the plan accordingly to the requirements listed in the SWP3. The contractor must follow the plan and the local MS4 operator must be notified 48 hours prior to the start of the construction.

The Luck Design Team sub-consultant will prepare drainage plans for submittal to the City, if applicable.

The Luck Design Team sub-consultant will prepare an erosion control sheet for inclusion into the plan set.

Luck Design Team sub-consultant will prepare a water service plan to the cemetery improvements project site based on the City of Bastrop design criteria. The water service plan will include the proposed water line from the existing nearby water.

The Luck Design team sub-consultant will provide:

Utility Coordination (Water)

- Map existing utilities in the project area on plan from surface features and 811 markings.
- Resolve potential water utility conflicts including connection points to the existing cemetery water system through design modifications and/or recommended utility adjustments.

Demolition / Removal Plan

- Prepare plan showing all site features to be removed by the contractor.

Drainage Report

- Conduct pre/post development drainage analysis.

- Prepare site stormwater layouts, anticipated to be an open system stormwater design. (No drainage improvements, over and above on-site grading, are proposed.)
- Prepare site drainage report, if applicable.

#### Environmental Regulations

- Prepare Calculation of Impervious Cover (anticipated less than 25%)
- Prepare temporary erosion and sediment controls.
- Prepare stormwater quality and stream treatment.

#### Project Site Plan

- Proposed erosion and sedimentation controls (SW3P).
- Proposed 2" irrigation loop main water system and hose bibs.
- Proposed site grading, contours, and spot elevations for all improvements.
- Proposed surface drainage improvements consisting of swales (plan and profiles will be provided)
- Proposed asphalt cemetery roads with concrete aprons (with roadway typical section and roadway plan and profile).
- Proposed fencing, if applicable.
- Cemetery loop drive with striping and signage.
- Required typical sections, details and notes.
- General Notes.
- Construction Phasing and Schedule.
- Prepare notes describing construction phasing.
- Prepare construction schedule estimate (working days).
- Prepare traffic control plan (barricade only).

Prepare final design development drawings incorporating the City's 60% plan comments.

LUCK Design Team and LUCK Design Team sub-consultants will collaborate to provide the City with a final opinion of probable construction costs for the City of Bastrop Cemetery Expansion Improvements at the 100% plan completion stage. Specifications and bidder instructions in CSI format and will be provided to assist staff in the preparation of bid packets and bid form formatting.

LUCK Design Team will advertise the project to bid in the local paper and in CivCast.

LUCK Design Team will deliver to the Owner one (1) original Issue for Bid set of construction documents and specifications and PDF documents of the same for bidding purposes.

The LUCK Design Team sub-consultant will make a recommendation for material testing services budget and scope to assist the City in hiring an inspection lab for the construction improvements.

LUCK Design Team will attend a maximum of two (2) meetings with the City of Bastrop for project review and coordination

G. Regulatory Services

LUCK Design Team and LUCK Design Team sub-consultants will prepare documents and drawings as reasonably required by the following governmental authorities to comply with permitting requirements that are in effect on the date of this agreement:

- The City of Bastrop Comprehensive Site Preparation Application permit. All City filing, permit review, application and Inspection fees to be waived for City projects.
- Texas Department of Licensing and Registration - Texas Accessibility Review (The consultant will register the project for accessibility with TDLR or the appropriate authorized agent as required prior to construction and make design modifications specifically identified by TDLR or the appropriate authorized agent as part of their pre-construction review.)

As is reasonably necessary, the consultant will evaluate, confer and respond to government staff and review comments regarding proposed improvements at the park site, including attending public hearings and addressing permitting issues if applicable.

LUCK Design Team and LUCK Design Team sub-consultants will make design modifications as requested by the applicable governmental authorities and approved by City Staff as they apply to the park components

#### H. Bidding Services

LUCK Design Team and LUCK Design Team sub-consultants will provide assistance during the bidding phase of the City of Bastrop Fairview Cemetery Improvements, Section 9 Development by answering technical questions from contractors and conducting a pre-bid meeting with the City and potential contractors. Bid packets consisting of project specifications and plans and bid form formatting, utilizing front-end documents preferred by the City of Bastrop will be prepared and issued.

Attend and assist the City with a pre-bid conference (1 meeting).

LUCK Design Team and Luck Design Team sub-consultants will will tabulate contractor bids in a spreadsheet format for City review, check contractor reference, conduct bid opening, review/evaluate bids including alternates, and make a recommendation of contractor awards to the City.

LUCK Design Team will work with the contractor to prepare the construction contract package together to be executed by the City Council (including COI, bonds, etc.

#### I. Construction Phase Services

LUCK Design Team and Luck Design Team sub-consultants will will participate in a preconstruction conference prior to commencement of Work at the Site and provide assistance during the construction phase by providing construction administration, such as, but not limited to, reviewing contractor shop drawings when appropriate, visiting the project site at appropriate intervals to observe the progress and quality of the Work completed by the Contractor. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor's work. Observations are to allow LUCK Design Team or its assigns, as experienced professionals, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. We anticipate that an average of one site visit every month (for two hours each visit) will be made during the construction phase of the project, which is projected to last twelve months. A total of twelve construction site visits is included in this scope of services.

LUCK Design Team shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. LUCK Design Team does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.

The design team will recommend to the Owner that Contractor's work be disapproved and rejected while it is in progress if, based on such observations, LUCK Design Team believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

The design team will issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. LUCK Design Team may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

We will recommend Change Orders and Work Change Directives to the Owner, as appropriate, and prepare Change Orders and Work Change Directives as required and determine the appropriate pay amounts due Contractor, based on observations by LUCK Design Team or its assigns, as experienced and qualified design professionals and on review of Applications for Payment and accompanying supporting documentation. The construction schedule will be reviewed by the consultant when the contractor submits Applications for Payment each month.

A final walk-through of the construction site with the Owner's representative and the Contractor prior to the preparation of a final punch list will also be conducted. Attend and assist the City with substantial completion inspection(s) and final walk-thru including concurrent TAS inspection; issue punch list for incomplete items including time for completion and issuing letter of substantial and final completion (1 meeting).

LUCK Design Team and LUCK Design Team sub-consultants will attend and assist the City with final inspection for acceptance of project and issue letter of concurrence (1 meeting).

LUCK Design Team and LUCK Design Team sub-consultants will assist the City in acquiring final close-out documents, warranties, accurate as-built drawings, and other documents required to close-out project. Consultant will develop Record Drawings and provide pdf and AutoCAD files to the City.

LUCK Design Team will assist with review and approval of contractor's final Application and Certification for Payment including retainage.

J. Post Construction Survey to Set Burial Plot Block Corners

A LUCK Design Team sub-consultant will set monuments for each burial plot block corners in the expansion area. Summit Geomatics will set the monumentation after the construction of the project improvements. This monumentation will enable the City of Bastrop to establish individual burial plot, within each block as needed.

## II. CLIENT RESPONSIBILTIES AND PROJECT ASSUMPTIONS

The site is approximately 2.52-acres and is located at the southeast corner of the Fairview Cemetery. The Cemetery is generally located northeast of the intersection of Texas Highway 95 and Farm Street in Bastrop, Texas.

The anticipated City of Bastrop Fairview Cemetery Improvement, Section 9 Development elements included for design under the scope of services include:

- Proposed cemetery lot layout controls;
- Columbaria improvements with rock veneer and concrete flatwork and covered shade structure over the central three columbaria units;
- Loop cemetery drive at the 2.520 acres site;
- Loop irrigation main and hose bibs;
- Planting improvements at the columbaria site



No new building structure floor plans for interment services, restrooms, office areas or maintenance are included in this scope of services.

No electrical engineering services are included in the scope of services for the columbaria improvements.



**III. COMPENSATION SUMMARY**  
**(See Attachment B – Excel Spreadsheet Basis of Compensation)**

Summary Fee Table:

<b>Item 1: Cemetery Expansion Construction Document Preparation</b>	<b>Fee Basis</b>	<b>Fee</b>
A. Fairview Cemetery Tract Boundary Retracement	Time and Materials Not to Exceed	\$10,725
B. Houston Toad Habitat Assessment	Time and Materials Not to Exceed	\$5,274
C. Geotechnical Evaluation	Time and Materials Not To Exceed	\$6,300
D. 30% Construction Contract Documents Completion: Design Plans, Specifications, Project Manua, OPCC )	Time and Materials Not To Exceed	\$7,500
E. Construction Contract Documents Completion: Design Plans, Specifications, Project Manual, OPCC(60% Construction Contract Documents Completion)	Time and Materials Not To Exceed	\$9,000
F. Construction Contract Documents Completion: Design Plans, Specifications, Project Manual, OPCC(100% Construction Contract Documents Completion)	Time and Materials Not To Exceed	\$34,125
G. Regulatory Services	Time and Materials Not To Exceed	\$2,500
H. Bidding Services	Time and Materials Not To Exceed	\$6,375
I. Construction Phase Services	Time and Materials Not To Exceed	\$21,500
J. Post Construction Survey to Set Burial Plot Corners	Time and Materials Not to Exceed	5,000
K. Reimbursable Expense	Estimated at cost plus 5%	\$4,000
<b>Item1</b>	<b>Total Fee:</b>	<b>\$112,299</b>

Fabiola M. de Carvalho  
June 22, 2023  
Page 13

LUCK Design Team and LUCK Design Team sub-consultants will perform the services identified in this Scope of Services and in accordance with cost breakdown shown on Table 1 herein provided on a Reimbursable/Hourly (Not-to-Exceed) basis in the amount of \$112,299.

Reimbursable expenses (billed at cost) will be billed in addition to the total design fee as reimbursable expenses are accrued.

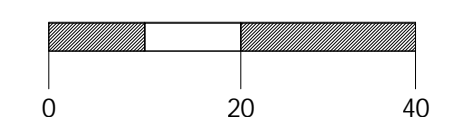
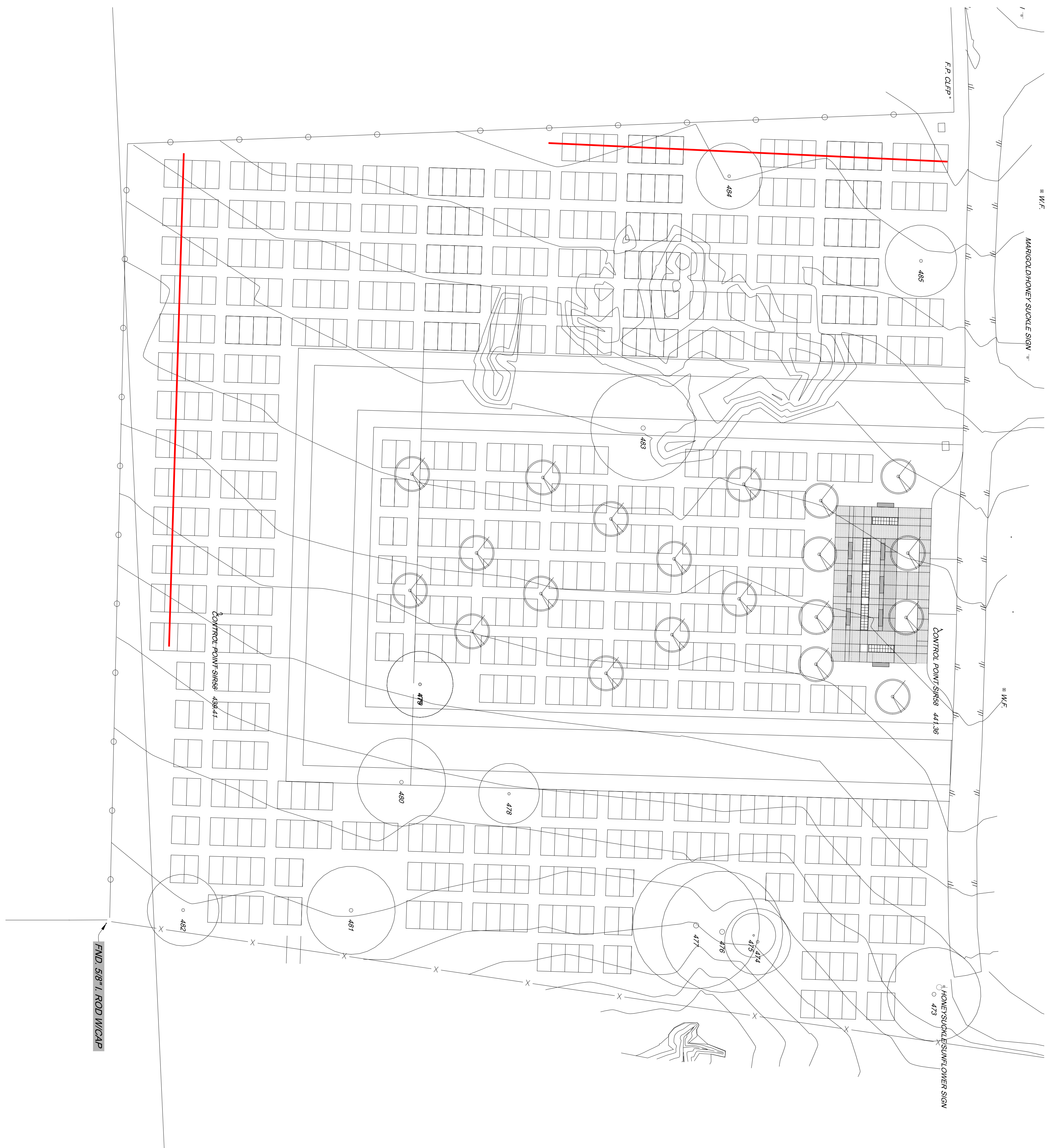
Rate increases will not affect the cost of the project.

We appreciate the opportunity to be of service and look forward to assisting you in the development of this project. Upon your review of this proposal, please call if you have any questions.

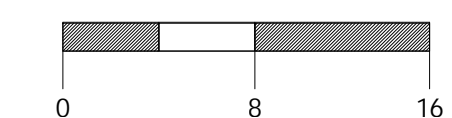
Respectfully submitted,



Brent Luck, PLA  
Park Planner / Landscape Architect



# ATTACHMENT A



## Fairview Cemetery Expansion

City of Bastrop

## Materials Plan

L:\049\01 - Fairview Cemetery\construction documents\L2.0 Materials.dwg modified by Brent on May 17, 2022 - 2:12pm



Bastrop Cemetery		Rates									
Updated: 2023-06-22		\$	125.00	\$	60.00						
						Raba Kistner Geotech	Cambrian Environmntl Habitat Assessment	Freeland - Civil	Franke Structural	TOTAL FEE	
			Brent PM		Brent LA/CAD						
<b>Boundary Retracement</b>											
Boundary Retracement			0		0			\$	10,725		
	<b>LDT Subtotal Fee</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$10,725</b>	<b>\$0</b>	<b>\$10,725</b>	
		1.32%									
<b>Houston Toad Habitat Assessment</b>											
Houston Toad Habitat Assessment			4		0		\$	4,774			
	<b>LDT Subtotal Fee</b>	<b>\$500</b>	<b>\$500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,774</b>	<b>\$0</b>	<b>\$0</b>	<b>\$5,274</b>	
		1.32%									
<b>Geotechnical Engineering Study</b>											
Geotechnical Evaluation			4		0	\$	5,800				
	<b>LDT Subtotal Fee</b>	<b>\$500</b>	<b>\$500</b>	<b>\$0</b>	<b>\$5,800</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$6,300</b>	
		1.32%									
<b>Schematic Design (30%) - 2 months</b>											
Project meetings - Client / Design Team - 1x/week for 4 hours			6								
Layout Plan			4								
Materials Plan			4								
Grading Plan			4								
Planting Plan											
Irrigation Plan											
Details			2								
Specifications / Coordination with Manufacturers											
Cost Estimate refinement											
Travel Trips (2) - 1 x /mth			8								
Meeting with Parks Board/Foundation/others											
Subconsultant Fees								\$	4,000		
	<b>LDT Subtotal Fee</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,000</b>	<b>\$0</b>	<b>\$7,500</b>	
		9.21%									
<b>Design Development (60% Construction Document Completion) - 4 months</b>											
Project meetings - Client / Design Team - 1x/week for 4 hours			12								
Layout Plan			12								
Materials Plan											
Grading Plan											
Planting Plan											
Irrigation Plan											
Details		17.11%									
Specifications / Coordination with Manufacturers											
Cost Estimate											
Travel Trips (4) - 1 x /mth											
Meeting with Parks Board/Foundation/others											
Subconsultant Fees									6000		
	<b>LDT Subtotal Fee</b>	<b>\$3,000</b>	<b>\$3,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$6,000</b>	<b>\$0</b>	<b>\$9,000</b>	
		7.89%									
<b>D Construction Documents Preparation - 6 months</b>											
Project meetings - Client / Design Team - 1x/week for 4 hours			3								
Layout Plan			8								
Materials Plan			8								
Grading Plan											
Planting Plan			4								
Irrigation Plan			18								
Details			32								
Specifications / Coordination with Manufacturers											
QAQC Review											
Cost Estimate			4								
Travel Trips (6) - 1 x /mth											
Meeting with Parks Board/Foundation/others											
Subconsultant Fees								\$	16,000	\$	8,500
	<b>LDT Subtotal Fee</b>	<b>\$9,625</b>	<b>\$9,625</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$16,000</b>	<b>\$8,500</b>	<b>\$34,125</b>	
		25.33%									
<b>E Regulatory Services</b>											
Permitting			4								
Travel Trips (1)											
Subconsultant Fees								\$	2,000		
	<b>LDT Subtotal Fee</b>	<b>\$500</b>	<b>\$500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,000</b>	<b>\$0</b>	<b>\$2,500</b>	

ATTACHMENT B  
Excel Spreadsheet Basis of  
Compensation



City of Bastrop Fairview Cemetery Improvements, Section 9 Development

Anticipated Schedule for Design and Construction

Updated: 2023.04.04

<b>Activity or Submittal</b>	<b>Anticipated Completion Time Frame for Design and Bidding - 7 months</b>
Geotechnical Evaluation	45 days
Schematic Plan Development (30% Construction Document Completion)	45 days
Design Development (60% Construction Document Completion)	60 days
Construction Documents Preparation (100% Construction Document Completion)	60 days
Regulatory Services	30 days
Bidding and Negotiation	30 days
Advertising and Council Approval	60 days
<b>Activity or Submittal</b>	<b>Anticipated Completion Time Frame for Construction - 12 Months</b>
Construction	Anticipated 12 Months

May 8, 2023

Luck Design Team  
Brent Luck  
9600 Escarpment Blvd, Suite 745-4  
Austin, TX 78749  
(512) 810-0684

**Submitted electronically via email:** [bluck@luckdesignteam.com](mailto:bluck@luckdesignteam.com)

**Reference:** City of Bastrop - Fairview Cemetery Civil Engineering Services

Mr. Luck:

Freeland Turk Engineering Group, LLC (FTEG) appreciates the opportunity to submit this proposal for professional engineering services associated with the City of Bastrop - Fairview Cemetery Design. Based on our understanding of the project, FTEG proposes the following Scope of Work:

### **General Description of Civil Improvements**

The City of Bastrop seeks to construct the cemetery expansion based on the most recent site plan dated August 27, 2022 (see attached layout).

### **Scope of Work**

1. Using the topographic survey prepared for the due diligence services, we will
  - a. Prepare site civil construction documents for the cemetery expansion plan prepared by Luck Design Team.
  - b. The improvements include a loop access road, on-site grading, and an irrigation line loop connected to the existing water line.
  - c. No drainage improvements, over and above on-site grading, are proposed.
2. The construction documents and other deliverables will consist of the following:
  - a. Summary of Pay Items / Cost Estimate
  - b. Drainage Map



- c. Roadway Typical Section
  - d. Summary of Quantities
  - e. Plan and profile sheets for roadway and drainage improvements
  - f. Cross-sections
  - g. SW3P
  - h. TCP (Barricades only)
  - i. Selective Clearing and Grubbing
  - j. General Construction Notes and Specifications suitable for bidding
3. Review geotechnical reports and pavement design provided
  4. Submit the construction plans to you for inclusion in the permitting packages (30%, 60%, 90%, and Final) and address city comments.
  5. Collaborate online with the City of Bastrop using Bluebeam.
  6. Assist with bidding phase services, including responding to RFI's and preparing addenda on civil-related issues when required.
  7. Assist the Luck Design Team during the construction phase on civil-related issues, including:
    - a. Attend the pre-construction meeting.
    - b. Review submittals.
    - c. Respond to requests for information.
    - d. Visit the construction site and provide construction observations two times per month.
    - e. Prepare and issue minor change orders.
    - f. Review pay applications.
    - g. Participate in substantial and final inspections.
    - h. Prepare as-built drawings for civil-related improvements based on the contractor's markups.
  8. Develop a construction materials testing scope of work and budget.
  9. Prepare a boundary retracement of the entire Fairview Cemetery Tract as shown on the 1997 plat prepared by LCRA.
  10. Set monuments for each burial plot block corners in the expansion area. Summit Geomatics will set the monumentation after the construction of the project improvements. This monumentation will enable the City of Bastrop to establish individual burial plot, within each block as needed.

### **Exclusions**

The items and services listed below are currently not required and are expressly excluded from the scope of work in this proposal. If the project needs change, FTEG will provide any excluded items and additional services for compensation based on hourly rates plus reimbursable expenses per the Rate Schedule.

1. Entitlement efforts (zoning, platting, easements, etc.). We assume this site is entitled and permitted for the intended use.
2. Geotechnical design, we assume the Luck Design Team will provide a roadway pavement section for this expansion project.
3. Geological and environmental assessments.
4. Detailed hydrologic and hydraulic analysis beyond local drainage study for the site (floodplain studies, etc.)
5. Landscape, irrigation, tree protection/preservation plans.
6. Utility coordination/locates or other wet, dry, or franchise utility design not explicitly mentioned in the scope.
7. TAS / TDLR review or registration.
8. Fire flow or hydraulic calculations
9. Any design services related to the columbarium (structural/architectural).
10. Permitting Assistance.
11. Environmental studies (including those related to the Houston Toad habitat)

### **Owner Responsibilities**

1. Provide one point of contact for coordination and decision-making.
2. Provide access to the site.
3. Provide all pertinent information available from the City of Bastrop that can be reasonably retrieved.
4. Payment of all permitting fees.
5. Provide existing irrigation line locations and other utility information on site design.
6. Provide design criteria, construction standards, and plan development procedures.
7. Right-of-Entry on the Dryden Estate Property to the east of the cemetery expansion area.

### **Schedule**

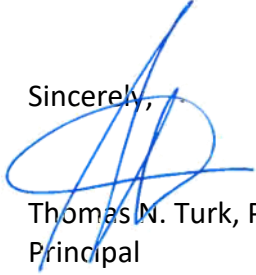
FTEG Engineering will complete the scope of work following your schedule, but not less than three months from notice to proceed and receipt of the final site plan.

### **Compensation / Rate Schedule**

FTEG will provide the scope of work described herein at hourly rates, plus expenses for an amount not exceeding \$48,725 without authorization from the Luck Design Team. Billings will be per the 2023 Rate Schedule provided herein

Please review the proposal, Terms of Agreement, and rate schedule. Contact us if there are any questions. We appreciate the opportunity to submit this proposal and look forward to assisting you in developing this project.

Sincerely,



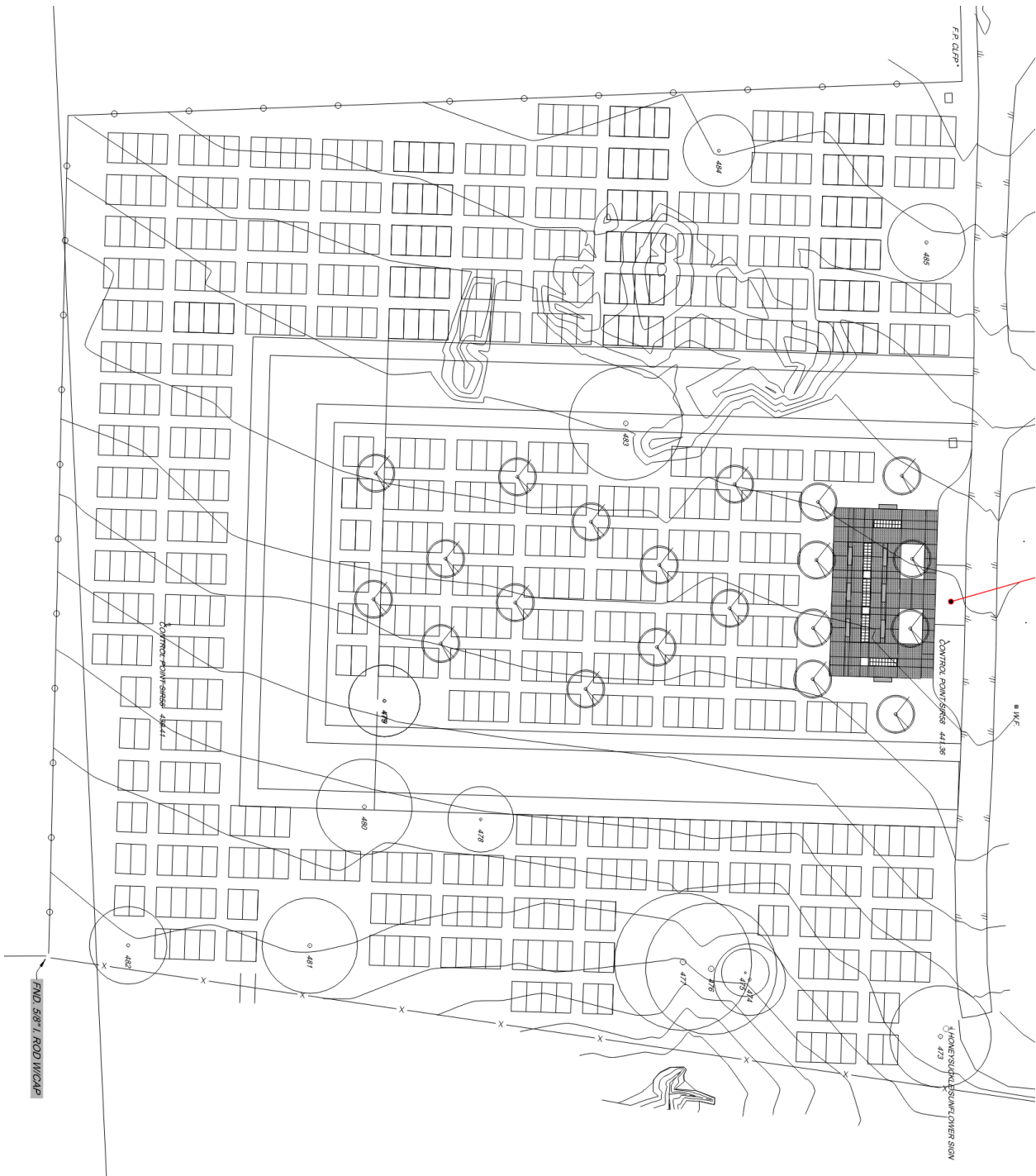
Thomas N. Turk, P.E.  
Principal

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Approval Signature

Date

Attachments: Terms of Agreement  
Proposed Layout



## TERMS OF AGREEMENT AND RATE SCHEDULE

**Basic Agreement and Period of Service**— Freeland Turk Engineering Group, LLC (Engineer) shall provide and furnish the services described herein within the time frame set forth in this agreement. Work required that is not specifically described in the scope of services is considered additional services and is not included in the quoted fee.

**Payment** - Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month from said thirtieth day, and (2) in addition if the Owner fails to make any payment, the Engineer may, with written notice, suspend services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. The Engineering has the right to terminate the agreement, upon written notice, if the Owner fails to make any payment. Owner waives any and all claims against Engineer for any such suspension. Engineer may also request retainer prior to beginning work on new contracts. Engineer understands invoice are to be submitted to Owner by the 25<sup>th</sup> day of each month to meet the 30-day payment.

**Termination** - The obligation to continue performance under this Agreement may be terminated for cause by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. The Owner may terminate this agreement for convenience. In the event of any termination by the Owner, the Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the date of termination. Either party shall notify the other party in writing of any default in the performance of any obligation under this agreement and allow any defaults to be cured within 7 days of notice. Non-payment by Owner will result in immediate suspension of work upon notice in writing if due and outstanding. If the defaults are not cured within that time frame, the Engineer has the right to suspend work immediately upon written notice and terminate the agreement.

**Indemnification and Limitations of Liability** - To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, provided that any such claim, action, loss, damages, or judgment is attributable to bodily

injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Specific Project or the specific Task Order from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the compensation received by the Engineer under this Agreement.

To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement.

**Disputes** - Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law. This Agreement is to be governed by the laws of the State Texas.

**Total Agreement** - This Agreement (including the Proposal, Terms of Agreement, Rate Schedules and any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

## 2023 Billing Rate Schedule

### Freeland Turk Engineering Group, LLC

The following rate schedule is in effect for the calendar year specified and is subject to change after December 31, 2023.

#### Hourly Rates

Principal	\$ 205/hour
Senior Project Manager	\$ 195/hour
Project Manager	\$ 180 /hour
Sr. Design Engineer (P.E.)	\$ 165/hour
Design Engineer (P.E.)	\$ 150/hour
Engineering in Training - 2	\$ 135/hour
Engineering in Training - 1	\$ 125/hour
Sr. Design Technician	\$ 125/hour
Design Technician	\$ 105/hour
CADD Technician	\$ 90/hour
GIS Specialist	\$ 115/hour
Construction Inspector	\$ 105/hour
Administrative/Support Staff	\$ 85/hour

#### Reimbursable Expenses

Mileage – Current IRS Standard Mileage Rate times Miles Traveled

Inside Office Printing - \$0.05 per page

Outside/Contract Printing & Plotting – Direct Cost plus 5%

Shipping – Direct Cost plus 5%

Other miscellaneous expenses – Direct Cost plus 5%

#### Following Reimbursable Expenses will require Owner approval

Overnight travel expenses (airfare, hotel, meals, rental cars, etc.) – Direct Cost plus 5%

Sub-consultants – Direct Cost plus 5%



[Delivery by Email: [bluck@luckdesignteam.com](mailto:bluck@luckdesignteam.com)]

Proposal No. PAA23-034-00  
June 22, 2023, Revision No. 1

City of Bastrop

c/o: Mr. Brent Luck  
LUCK Design Team  
9600 Escarpment Blvd., Suite 745-4  
Austin, Texas 78749

8100 Cameron Road, Suite B-150  
Austin, TX 78754

P 512.339.1745  
F 512.339.6174  
TBPE Firm F-3257

[WWW.RKCI.COM](http://WWW.RKCI.COM)

**RE: Proposal for Geotechnical Engineering Study  
Fairview Cemetery Expansion  
Bastrop, Texas**

Dear Mr. Luck:

RABA KISTNER Consultants, Inc. (RKCI) is pleased to submit this proposal for Geotechnical Engineering Services for the above referenced project. The broad objectives of our study will be to determine soil conditions at the site and to develop foundation and pavement design recommendations, and construction considerations for a cemetery expansion in Bastrop, Texas. Described in this proposal are:

- our understanding of pertinent project characteristics;
- our proposed scope for field and laboratory study;
- our proposed scope for engineering evaluation and reporting;
- our tentative project schedule; and
- our lump sum study cost.

### **Project Description**

Under consideration in this study is an expansion to the Fairview Cemetery in Bastrop, Texas. The expansion includes new roadways and columbaria. The columbaria is expected to be supported on a slab on grade. The pavement systems are expected to be comprised of flexible (asphalt) pavements.

### **Field Study**

Explore the near-surface soil conditions at the site by drilling 7 hand augured borings to depths of 6 ft below existing ground surface. The location of the borings are shown on the attached Proposed Boring Location Map. The borings will be located in the field utilizing a recreation grade hand-held GPS device. Our scope of service does not include surveying in the boring location. The borings will be backfilled utilizing auger cuttings and/or bentonite generated during drilling activities.

Samples collected will be retained in our laboratory for 30 days after submittal of the final geotechnical report.



Proposal No. PAA23-034-00  
June 22, 2023, Revision No. 1

### **Laboratory Testing**

Upon completion of the subsurface exploration, a testing program will be designed to define the strength and classification characteristics of the subgrade soils. The laboratory testing program is anticipated to include moisture content tests, Atterberg Limits (plasticity) tests, and grain size analyses. However, the actual type and number of laboratory tests will be based on the subsurface conditions encountered in the borings. The laboratory testing will be performed in general accordance with applicable ASTM standards. A California Bearing Ratio (CBR) test value will be assumed based on the laboratory test results performed to estimate the strength of the subgrade soils.

### **Engineering Report**

The results of the field and laboratory phases of the study will be reviewed by our staff of engineers and geologists. The results of our review, together with the supporting field and laboratory data, will be presented in a written, engineering report. The Geotechnical Engineering Report will include the following information and recommendations, if applicable:

- A boring location map and boring logs;
- A summary of the field and laboratory sampling and testing program,
- A summary of the laboratory test results;
- A review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered.
- Foundation design recommendations, including:
  - available bearing pressure(s) for shallow foundations; and
  - sliding resistance parameters.
- Foundation construction considerations, including:
  - site drainage;
  - site preparation;
  - select fill material specifications;
  - shallow foundation excavations;
  - excavation considerations; and
  - fill placement compaction.
- Flexible pavement component thickness recommendations for light duty parking and driveways.

The final report will be produced in a digital PDF and delivered via email.

### **Tentative Project Schedule**

Based on our present workload and weather permitting, we anticipate that we could begin the field exploration phase of this study within 3 to 5 working days of receiving your written authorization. The field exploration and laboratory testing phase of the study is expected to take approximately 5 to 7 working days to complete. Engineering analyses and preparation of the engineering report is expected to take an additional two weeks to complete.

Proposal No. PAA23-034-00  
June 22, 2023, Revision No. 1

### **Project Cost**

The total lump sum cost for the study scope outlined herein is **\$5,800**.

Should unusual soil conditions be encountered in the field that indicates the desirability of significantly broadening the scope of the study, we will contact you to receive authorization before proceeding with any additional work. Additional services will be billed on a unit basis in accordance with our standard fees as indicated on the attached Schedule of Fees for Professional Services.

We assume that the Client will provide underground utility clearance. RKCI will assist in locating underground utilities, provided the Client submits documentation of existing utility locations. RKCI will take all precautions to prevent damage to property and landscaping.

It should be noted that our study scope and project cost does not include professional time and travel expenses for participation in design team meetings. Furthermore, our estimate does not include professional time for plan review to determine whether the drawings comply with the intent of the geotechnical recommendations.

### **Acceptance**

We appreciate the opportunity of submitting this contract and look forward to working with you in the development of this project, which will be carried out in accordance with this letter and the following attachments:

<u>Attachment</u>	<u>Description</u>
I	Proposed Boring Location Map
	Standard Terms and Conditions
II	Schedule of Fees

Please return one signed copy of this letter proposal to provide written authorization for our firm to complete work on the services outlined herein. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Proposal No. PAA23-034-00  
June 22, 2023, Revision No. 1

RKCI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part of any purpose other than to evaluate this proposal.

Very truly yours,

**RABA KISTNER CONSULTANTS, INC.**

Accepted  
By:



Reed S. Kistler, P.E.  
Geotechnical Group Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

RSK: jm  
Attachments: Proposed BLM  
I & II  
Copies Submitted: Above (1)



**BORING 1**  
6' deep

**BORING 2**  
6' deep

**BORING 3**  
6' deep

**BORING 4**  
6' deep

**BORING 5**  
6' deep

**BORING 6**  
6' deep

**BORING 7**  
6' deep

Pre-Fab Columbaria

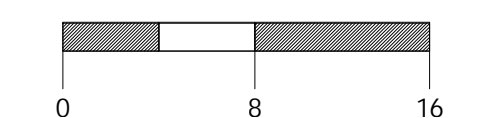
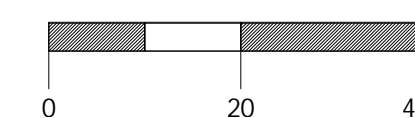
Cut Limestone Block Bench

Pre-Fab Columbaria with Roof Structure

Pre-Fab Columbaria

CONTROL POINT SIR58 441.36

ENLARGEMENT







## STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.**

1.1 **RK.** Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 **CLIENT.** Person, entity or organization for which RK is rendering services regarding the Project.

1.3 **PROJECT.** The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 **CONTRACTOR.** Person, entity or organization providing construction services, including labor and material for the Project.

1.5 **SERVICES.** The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 **AGREEMENT.** RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing

the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans, specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a

warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with

or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT

communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS,**

**DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.**

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.



**SCHEDULE OF FEES FOR PROFESSIONAL SERVICES**

**PERSONNEL:**

Principal.....	\$135 to \$250/hour
Professional.....	\$70 to \$200/hour
Auto Cad Operator.....	\$65 to \$110/hour
Technical/Clerical/Administrative .....	\$40 to \$80/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a \$10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba Kistner (RK) will be charged according to their professional classification.

**EXPENSES:** Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

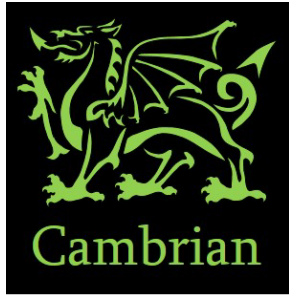
Other project specific charges for use of RK equipment or for RK testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

**CONDITIONS:** Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.



Cambrian Environmental  
4422 Pack Saddle Pass  
Suite 204  
Austin, TX 78745

Tel (512) 663-0156

[www.cambrianenvironmental.com](http://www.cambrianenvironmental.com)

Brent Luck  
LUCK Design Team  
9600 Escarpment Blvd., Suite 745-4  
Austin, Texas 78749

26 April 2023

**Re: Proposal to Conduct a Habitat Assessment for the Approximately 2.5-acre Tract neighboring Fairview Cemetery in Bastrop, Bastrop County, Texas.**

Dear Brent,

We appreciate the opportunity to provide you with this proposal to produce an assessment for habitat appropriate for the federally endangered Houston Toad in support of Fairview Cemetery expansion. Cambrian Environmental includes a team of specialists in both terrestrial and aquatic herpetofauna, and their ecology. Our herpetologists collectively have over 40 years of experience in conservation, monitoring, and academic research, throughout Texas, but more specifically within the Lost Pines ecoregion. Our staff holds a U.S. Fish and Wildlife Service (USFWS) permit (ESPER00051008) that covers Houston Toads and their habitat.

The following scope contains a more detailed description of our approach. We are prepared to begin immediately. Please do not hesitate to contact me with any comments or questions regarding this proposal. If you find the terms acceptable please return a signed copy as notification to begin work.

Best regards,

Andrew MacLaren, Ph.D.  
Senior Ecologist  
Cambrian Environmental  
Mobile # 832.392.8916





Cambrian Environmental  
4422 Pack Saddle Pass  
Suite 204  
Austin, TX 78745

Tel (512) 663-0156

[www.cambrianenvironmental.com](http://www.cambrianenvironmental.com)

## Scope of Services

### Task 1      **Houston Toad Habitat Assessment**

This task will be performed by Cambrian Environmental Ecologists who are permitted by the U.S. Fish and Wildlife Service (USFWS) to conduct management and research for the Houston Toad (*Anaxyrus houstonensis*). Under this task our staff will conduct a thorough investigation of the history of Houston Toad occurrence within, and surrounding, the project area, and conduct a field visit to the site where no fewer than two biologists will walk the project area in search of Houston Toads, and their associated habitats. Costs associated with this task include research and report preparation, map production, one biological field visit, and mileage to and from the field site.

The property is located within Critical Habitat for the Houston Toad. Additionally, the project area is within 5 kilometers of previously occupied ponds within Bastrop State Park, as well as previously occupied portions of Lake Bastrop, which indicates some likelihood that Houston Toads might occur here, or on the neighboring tracts.

Further investigations, such as remote auditory monitoring, nocturnal human performed auditory surveys, daytime upland surveys for metamorphosed juveniles, or aquatic searches for egg strands and tadpoles on the site are beyond this scope of services. If desired, these additional tasks, as well as continued annual monitoring, could be proposed as a subsequent phase of work.

**Project Cost for Task 1: Not-to-Exceed      \$4,774.00**



Cambrian Environmental  
 4422 Pack Saddle Pass  
 Suite 204  
 Austin, TX 78745

Tel (512) 663-0156

www.cambrianenvironmental.com

**Cambrian Environmental Service Agreement**

EIN 46-5009426

20 June 2023

<b>Project Name</b>	Fairview Cemetery 2.5-Acre Expansion	<b>Client Name</b>	LUCK Design Team
<b>Project Number</b>		<b>Point of Contact</b>	Brent Luck
<b>Cambrian Project Manager</b>	Andrew MacLaren, Ph.D.	<b>Address</b>	9600 Escarpment Blvd., Suite 745-4 Austin, Texas 78749
		<b>Phone</b>	512.810.0684
		<b>E-mail</b>	bluck@luckdesignteam.com

Scope of Services: (See Attached)

Terms of Payment:

Fixed Fee: \$ \_\_\_\_\_

Time and Materials Not to Exceed: \$ 4,774.00

Cambrian Environmental

Client: LUCK Design Team

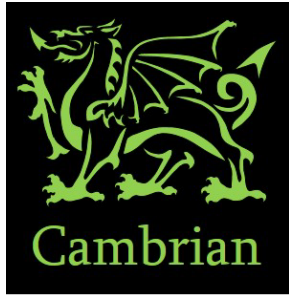
**X**

\_\_\_\_\_  
 Kemble White  
 Owner, Cambrian Environmental

**X**

\_\_\_\_\_  
 Client (Please print and sign)

**Scope of Services.** Subject to the terms set forth in this agreement Cambrian Environmental (Cambrian) shall provide those services agreed to in writing. Any additional services provided by Cambrian in connection with this agreement are to be authorized on Cambrian's standard change order form, which shall be incorporated herein, describing changes in the scope of work and any adjustment in pricing and terms.



Cambrian Environmental  
4422 Pack Saddle Pass  
Suite 204  
Austin, TX 78745

Tel (512) 663-0156

[www.cambrianenvironmental.com](http://www.cambrianenvironmental.com)

**Payment.** In the event of late payment or other breach of this Agreement by Client, Cambrian reserves the right to stop work or to withhold its work product pending payment in full. Unless Client objects in writing to any charges set forth in an invoice within 10 days of receipt of the invoice, such invoice shall be deemed accepted.

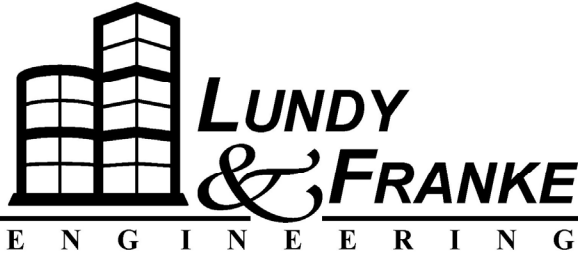
**Termination.** In the event that this Agreement is terminated and the Services are priced on a fixed fee basis Cambrian shall be entitled to prorated payment from Client based on the percentage of work completed as reasonably estimated by Cambrian. In the event that this Agreement is terminated and the Services are priced on a Time and Materials basis, Cambrian shall be entitled to payment based on the number of hours worked at the applicable rate, and in all events Cambrian shall be entitled to reimbursement of costs incurred prior to termination.

**Limited Warranty; Disclaimer.** Cambrian warrants that services performed will be in conformance with the generally accepted standards of similar professional service organizations operating under similar conditions. In the event of a breach of the foregoing warranty, Cambrian's only obligation shall be to use reasonable efforts to re-perform the services or to refund the fees paid by the client at Cambrian's option. Except for the foregoing warranty, the services and information provided under this agreement are provided "as-is". Client understands that Cambrian may not uncover all relevant information for a variety of reasons and that reports generated by Cambrian may rely on various third-party information and references which Cambrian may assume to be accurate without independent verification. Any maps or similar materials provided by Cambrian are for illustration only and should not be relied on as surveys.

**Delays.** Cambrian will extend all reasonable efforts to complete the services on or prior to any completion date specified in the scope of services subject to factors beyond Cambrian's reasonable control. Cambrian is not responsible for delays or other circumstances caused by the unavailability of required information from the client, delays in government approvals, or other factors beyond Cambrian's reasonable control.

**Limitation of Remedies.** Should the client incur any damages in connection with this agreement or the services, Cambrian's liability shall in no event exceed the amount actually paid by Client to Cambrian for the Services. To the maximum extent permitted by law, Cambrian shall have no other liability to client for any damages, whether general, special, incidental or consequential, including any lost profits or lost savings, whether or not foreseeable. Client expressly acknowledges and agrees that Cambrian relies on the disclaimers and limitations set forth herein.

**Assignment; Successors; Third-Parties.** Client may not assign its rights under this agreement without Cambrian's written consent.



December 3, 2022

Luck Design Team  
9600 Escarpment Boulevard, Suite 745-4  
Austin, Texas 78749

Attn: Mr. Brent Luck

Re: Fairview Cemetery Columbaria

In accordance with our recent discussion, we are pleased to submit the following proposal for furnishing the structural engineering services on the above referenced project.

This proposal is based on the project described in discussions as a new columbaria structure.

The following are features, which define the scope of our services:

1. Foundation to columbaria and covered frame.
2. Structural framing over columbaria.

CONSTRUCTION DOCUMENTS PHASE

We propose to perform the Construction Documents Phase of the work for lump sum stipulated fee as follows, which includes concept conferences, determination of structural system, structural design/analysis, structural working drawings for the Primary Structural System, and structural specifications prepared for reproduction.

Fee for Construction Documents .....\$8,500.00

CONSTRUCTION ADMINISTRATION PHASE

This phase includes shop drawing checking, construction coordination/interpretations and field observation trips for compliance verification.

Fee for Construction Administration Phase.....\$2,500.00

*The above fee includes a maximum of 4 site visits. This quantity is considered usual and customary and represents normal Construction Phase services; trips beyond that amount would represent an abnormal situation requiring excessive field representation by our staff, e.g., resolution of hidden conditions, correction of Contractor's error or misinterpretations, re-inspections because of Contractor's mis-scheduling, etc. and would therefore be performed as ADDITIONAL SERVICES.*

We propose to enter into a contract with you based on the AIA Document C141, Standard form of Agreement between Architect and Consultant with the following alteration: we respectfully request that the Article entitled

“Arbitration” be revised to be an option course of action, in accordance with our Professional Liability Insurance carrier’s recommendations.

SCOPE OF SERVICES

Mutually acknowledged changes in the scope or design concept of the project, alternate design provisions, detached sitework structures not specifically mentioned herein, and-or substantial revisions during construction are not included.

Our current schedule of hourly rates is as follows:

Principal Engineers.....	\$215.00/Hour
Project Engineers.....	\$175.00/Hour
Engineers.....	\$150.00/Hour
BIM/Cadd.....	\$95.00/Hour
Secretarial.....	\$75.00/Hour
Automobile Transportation (out of county).....	\$.65/Mile
Travel Expenses (meals, lodging, etc.).....	as incurred

The hourly rates listed herein are subject to periodic review and change. Notification will be given of hourly rate schedule changes, as they may become necessary during the progress of the work. These hourly rates allow for general overhead and profit and include such things as the cost of salaries payable to such personnel plus payroll burden (social security contributions, unemployment and payroll taxes, workmen’s compensation, health benefits, sick leave, vacation, and holiday pay applicable thereto).

Invoices are submitted monthly for work performed and are due upon receipt. In the event the project is postponed or cancelled, or normal work progress is otherwise interrupted for an indefinite period exceeding 30 days we will invoice you for our services up to that time at the rates and direct costs listed herein.

We sincerely appreciate this opportunity to offer our services and look forward to working with you. If the above is agreeable to you, please sign and return one copy to us for our records. The commencement of performance under this proposal indicates an acceptance by the Client to the terms mentioned above. If there are any questions, please advise us.

Sincerely,

LUNDY & FRANKE  
ENGINEERING, INC.



Shawn J. Franke, P.E.  
SJF/sjf

Accepted By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A-3**

House Bill 89 Verification

*(See Attached)*



House Bill 89 Verification Form

I, Brent Luck (printed person's name), the undersigned representative of (Company or Business name) LUCK Design Team LLC (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:**

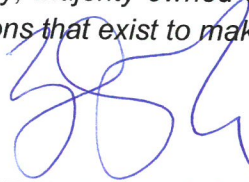
- 1. Does not boycott Israel currently; and
- 2. Will not boycott Israel during the term of the contract.

*Pursuant to Section 2270.001, Texas Government Code:*

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

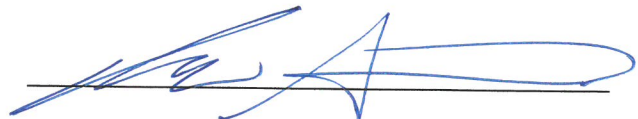
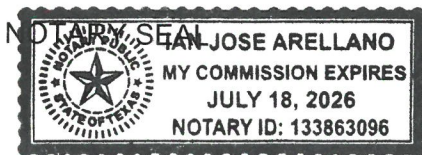
6/26/2023



DATE

SIGNATURE OF COMPANY REPRESENTATIVE

ON THIS THE 26 day of JUNE, 2023, personally appeared Brent Luck, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.



**EXHIBIT B-1**  
**REQUIREMENTS FOR GENERAL SERVICES CONTRACT**

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City, including any delay periods. If the Project is not finalized and the insurance expires, Contractor is obligated to extend the insurance coverage. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bastrop accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

**INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT**

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A. The City of Bastrop shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement**
- B. A waiver of subrogation in favor of The City of Bastrop shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
- C. All insurance policies shall be endorsed to the effect that The City of Bastrop will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D. All insurance policies, which name The City of Bastrop as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
- F. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop of any material change in the insurance coverage.
- G. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
- H. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop.
- J. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2016/03) Coverage must be written on an occurrence form.
- L. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M. Upon request, Contractor shall furnish The City of Bastrop with certified copies of all insurance policies.
- N. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Bastrop. The certificate of insurance and endorsements shall be sent to:

**City of Bastrop  
Engineering and Capital Project Management Department  
P. O. Box 427  
1311 Chestnut Street  
Bastrop, TX 78602**

## INSURANCE REQUIREMENTS

Items marked "X" are required to be provided if award is made to your firm.

### Coverages Required & Limits (Figures Denote Minimums)

<input checked="" type="checkbox"/> Workers' Compensation	Statutory limits, State of TX.		
<input checked="" type="checkbox"/> Employers' Liability	\$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate		
<input type="checkbox"/> Commercial General Liability:			
	<input type="checkbox"/> <b>Very High/High Risk</b>	<input checked="" type="checkbox"/> <b>Medium Risk</b>	<input type="checkbox"/> <b>Low Risk</b>
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

<input checked="" type="checkbox"/> Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)			
	<input type="checkbox"/> <b>Very High/ High Risk</b>	<input checked="" type="checkbox"/> <b>Medium Risk</b>	<input type="checkbox"/> <b>Low Risk</b>
Combined Single Limits	Combined Single Limits	Combined Single Limits	Combined Single Limits
\$1,000,000 Bodily	\$500,000 Bodily	\$300,000 Bodily	

Garage Liability for BI & PD  
 \$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto  
 \$2,000,000 General Aggregate

Garage Keepers Coverage (for Auto Body & Repair Shops)  
 \$500,000 any one unit/any loss and \$200,000 for contents

Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

- Contract value less than \$1,000,000: **not required**
- Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**
- Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**
- Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**
- Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate. This coverage must be maintained for at least two (2) years after the project is completed.

Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Bastrop) Limit is 100% of insurable value, replacement cost basis

Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Bastrop)

\$1,000,000 each occurrence  
 \$2,000,000 aggregate

Other Insurance Required: \_\_\_\_\_

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Purchasing & Risk Management if you need assistance or need additional information.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/27/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>USI Southwest</b> <b>9811 Katy Freeway, Suite 500</b> <b>Houston, TX 77024</b> <b>713 490-4600</b>	<b>CONTACT NAME:</b> Ofelia Padilla	
	<b>PHONE (A/C, No, Ext):</b> 713 490-4600	<b>FAX (A/C, No):</b> 713-490-4700
<b>E-MAIL ADDRESS:</b> ofelia.padilla@usi.com		
<b>INSURED</b> <b>Luck Design Team, LLC</b> <b>9600 Escarpment Blvd., Suite 745-4</b> <b>Austin, TX 78749</b>	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A :</b> XL Specialty Insurance Company	
	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
<b>INSURER F :</b>		<b>NAIC #</b> 37885

**COVERAGES**                                      **CERTIFICATE NUMBER:**                                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Professional Liab</b> <b>Claims Made Pol.</b>			<b>DPS501103002YR</b> Retro: 07/10/13	03/27/2023	03/27/2024	<b>\$1,000,000 per claim</b> <b>\$1,000,000 annl aggr.</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**RE: Project: Fairview Cemetery Improvements, Section 9 Development.**

<b>CERTIFICATE HOLDER</b> <b>City of Bastrop</b> <b>Engineering and Capital Project</b> <b>Management Department</b> <b>P. O. Box 427</b> <b>1311 Chestnut Street</b> <b>Bastrop, TX 78602</b>	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> 
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LUCKDES-01

DFRAZIER

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Donna Frazier, LLC DBA GlobalGreen Insurance Agency 120 W. 2nd Street Ste. E Taylor, TX 76574	<b>CONTACT NAME:</b> Donna Frazier <b>PHONE (A/C, No, Ext):</b> (512) 309-4323 <b>E-MAIL ADDRESS:</b>	<b>FAX (A/C, No):</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b>  Luck Design Team LLC 9600 Escarpment Blvd Ste 754-4 Austin, TX 78749	<b>INSURER A :</b> State Auto		<b>NAIC #</b>  16322
	<b>INSURER B :</b> Progressive		
	<b>INSURER C :</b> Hartford Casualty Insurance		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
	<b>INSURER F :</b>		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

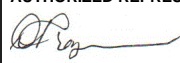
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X	X	10127549CB	4/15/2023	4/15/2024	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
B	<input type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	06491376	1/26/2023	1/26/2024	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							\$	
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$	X	X	10127556CU	4/15/2023	4/15/2024	EACH OCCURRENCE	\$ 1,000,000
							AGGREGATE	\$ 1,000,000
							\$	
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	46WECAL3B5J	4/15/2023	4/15/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Project: City of Bastrop Fairview Cemetery Improvements, Section 9 Development.

If required by written contract the Certificate Holder is covered as an additional insured with waiver of subrogation as indicated above.

**CERTIFICATE HOLDER****CANCELLATION**

City of Bastrop Engineering and Capital Project Management Department PO BOX 427 1311 Chestnut Street Bastrop, TX 78602	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 





## BLANKET ADDITIONAL INSURED BY CONTRACT

This endorsement modifies insurance provided under the following:

### **BUSINESS LIABILITY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the Policy apply.

**A.** The following is added to Section **C. WHO IS AN INSURED**:

**Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs **a.** through **f.** below are additional insureds when you have agreed, in a written contract or written agreement, or when required by a written permit issued by a state or governmental agency or subdivision or political subdivision that such person or organization be added as an additional insured on your Coverage Part, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by any other endorsement issued by us and made a part of this Coverage Part.

The insurance afforded to such additional insured will not be broader than that which you are required by the contract, agreement, or permit to provide for such additional insured.

The insurance afforded to such additional insured only applies to the extent permitted by law.

The limits of insurance that apply to additional insureds are described in Section **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**. How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**.

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

**(1)** The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b)** Any express warranty unauthorized by you;
- (c)** Any physical or chemical change in the product made intentionally by the vendor;
- (d)** Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or



(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

(1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or

(b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

(1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In connection with your premises; or

(b) In the performance of your ongoing operations performed by you or on your behalf.

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

(a) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

(i) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(ii) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

(b) This insurance does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard".

**e. State Or Governmental Agency Or Subdivision Or Political Subdivision Issuing Permit**

(1) Any state or governmental agency or subdivision or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or



(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

(1) Any other person or organization who is not in one of the categories or classes listed above in Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations performed by you or on your behalf;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if:

(i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service described in Paragraphs **f.(2)(a)** or **f.(2)(b)** above.



## BUSINESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the insurance company shown in the Declarations.

"Policy period", as used in this Coverage Part, means the period from the effective date of this Coverage Part to the expiration date of the Coverage Part as stated in the Declarations or the date of cancellation, whichever is earlier.

The word "insured" means any person or organization qualifying as such under Section **C. Who Is An Insured**.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F. Liability And Medical Expenses Definitions**.

### A. COVERAGES

#### 1. Business Liability Coverage (Bodily Injury, Property Damage, Personal And Advertising Injury) Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D. Liability And Medical Expenses Limits Of Insurance**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (b) The "bodily injury" or "property damage" occurs during the policy period; and
- (c) Prior to the policy period, no insured listed under Paragraph **1.** of Section **C. Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **C. Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or



(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**e. Incidental Medical Malpractice**

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

**2. Medical Expenses**

**Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

(2) The expenses are incurred and reported to us within three years of the date of the accident; and

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

**3. Coverage Extension - Supplementary Payments**

a. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish, finance, arrange for, guarantee, or collateralize these bonds, whether the collateralization is characterized as premium or not.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

(5) All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed against the insured.

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.



- (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the Limits of Insurance.

- b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - (2) This insurance applies to such liability assumed by the insured;
  - (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
  - (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - (6) The indemnitee:
    - (a) Agrees in writing to:
      - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
      - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (b) Provides us with written authorization to:
      - (i) Obtain records and other information related to the "suit"; and
      - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

## B. EXCLUSIONS

### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

#### a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".





**b. Contractual Liability**

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or
- (b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:
  - (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- (3) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol; or
- (4) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2), (3) or (4) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving, or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.



This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a)** At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this paragraph does not apply to:
    - (i)** "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii)** "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c)** Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i)** Any insured; or
    - (ii)** Any person or organization for whom you may be legally responsible;
  - (d)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this paragraph does not apply to:
    - (i)** "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii)** "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2)** Any loss, cost or expense arising out of any:
  - (a)** Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b)** Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".



However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

**(1) Unmanned Aircraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Exclusion **g.(1)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

**(2) Aircraft (Other Than Unmanned Aircraft), Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Exclusion **g.(2)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Exclusion **g.(2)** does not apply to:

- (a)** A watercraft while ashore on premises you own or rent;
- (b)** A watercraft you do not own that is:
  - (i)** Less than 51 feet long; and
  - (ii)** Not being used to carry persons or property for a charge;
- (c)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft (other than "unmanned aircraft") or watercraft;
- (e)** "Bodily injury" or "property damage" arising out of:
  - (i)** The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
  - (ii)** The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
- (f)** An aircraft (other than "unmanned aircraft") that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1)** The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2)** The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

**i. War**

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Professional Services**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
  - (a) Body piercing (not including ear piercing);
  - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
  - (c) Similar services;
- (10) Pharmaceutical services including but not limited to:
  - (a) The administering, prescribing, preparing, distributing or compounding of pharmaceutical drugs, vaccinations, immunizations or any of their component parts;
  - (b) The providing of or failure to provide home health care or home infusion products or services; and
  - (c) Advising and consulting customers;
- (11) Computer consulting, design or programming services, including web site design.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. Coverages.

**k. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;



- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D. Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**I. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**m. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal And Advertising Injury**

"Personal and advertising injury":

- (1) Arising out of oral, written, electronic, or any other manner of publication of material, if done by or at the direction of the insured with knowledge of its falsity;



- (2) Arising out of oral, written, electronic, or any other manner of publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of:
  - (a) Any actual or alleged infringement or violation of any intellectual property rights, such as copyright, patent, right of publicity, trademark, trade dress, trade name, trade secret, service mark or other designation of origin or authenticity; or
  - (b) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made against you, or by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

- (i) Infringement, in your "advertisement", of:
  - a. Copyright;
  - b. Slogan; unless the slogan is also a trademark, trade dress, trade name, service mark or other designation of origin or authenticity; or
  - c. Title of any literary or artistic work; or
- (ii) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

Paragraph (7)(b)ii above shall not apply to claims or "suits" alleging infringement or violation of trademark, trade dress, trade name, service mark or other designation of origin or authenticity.

- (8) Arising out of an offense committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of web sites for others; or
  - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section F. Liability And Medical Expenses Definitions.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.  
However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;
- (12) Arising out of:

- (a) Advertising content for others on your web site;
- (b) Placing a link to a web site of others on your web site;





- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
  - (i) Your web site; or
  - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities;

(15) Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information; or

(16) Arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "personal and advertising injury" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this exclusion does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

(a) Infringement, in your "advertisement", of:

- (i) Copyright;
- (ii) Slogan; or
- (iii) Title of any literary or artistic work; or

(b) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

**q. Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability**

(1) Damages because of "bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

This exclusion applies even if such damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraphs (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

**r. Employment-Related Practices**

"Bodily injury" or "personal and advertising injury" to:

(1) A person arising out of any:

- (a) Refusal to employ that person;
- (b) Termination of that person's employment; or





- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution or false arrest directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**s. Asbestos**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
  - (a) May be awarded or incurred by reason of any claim or "suit" alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
  - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
  - (c) Arise out of any claim or "suit" for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**t. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion**

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section D. Liability And Medical Expenses Limits Of Insurance.

**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.



**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

**f. Products-Completed Operations Hazard**

Included with the "products-completed operations hazard".

**g. Business Liability Exclusions**

Excluded under Business Liability Coverage.

**C. WHO IS AN INSURED**

**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business, other than that described in **b.** through **e.** below, of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

**2. Each of the following is also an insured:**

**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

**(1) "Bodily injury" or "personal and advertising injury":**

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

**(2) "Property damage" to property:**



(a) Owned, occupied or used by:

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator Of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons or property for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:



- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

## **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

### **1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

### **2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

### **3. Each Occurrence Limit**

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

### **4. Personal And Advertising Injury Limit**

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

### **5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

### **6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance required in a written contract, written agreement or permit; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this Policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this Policy and the endorsements is the single highest limit of liability of all



coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**

### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

#### **a. Notice Of Occurrence Or Offense**

You or any additional insured under this Coverage Part must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

#### **b. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured under this Coverage Part must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured under this Coverage Part must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

#### **c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

#### **d. Obligations At The Insured's Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **e. Additional Insured's Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured under this Coverage Part, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with such additional insured's own insurance.

#### **f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured under this Coverage Part only when such "occurrence", offense, claim or "suit" is known to:



- (1) You or any additional insured under this Coverage Part that is an individual;
- (2) Any partner, if you or an additional insured under this Coverage Part is a partnership;
- (3) Any manager, if you or an additional insured under this Coverage Part is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured under this Coverage Part is a corporation;
- (5) Any trustee, if you or an additional insured under this Coverage Part is a trust; or
- (6) Any elected or appointed official, if you or an additional insured under this Coverage Part is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured under this Coverage Part.

### 3. Legal action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

### 5. Representations

#### a. When You Accept This Policy

By accepting this Policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this Policy in reliance upon your representations.

#### b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

### 6. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

##### (1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk, Owner Controlled Insurance Program or OCIP, Contractor Controlled Insurance Program or CCIP, Wrap Up Insurance or similar coverage for "your work";





**(2) Premises Rented To You**

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**(3) Tenant Liability**

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

**(4) Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **B.** Exclusions.

**(5) Property Damage To Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **B.** Exclusions.

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.





If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### **7. Transfer Of Rights Of Recovery Against Others To Us**

##### **a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

##### **b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

#### **F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purpose of attracting customers or supporters is considered an advertisement.
2. "Advertising idea" means any idea for an "advertisement".
3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
4. "Auto" means:
  - a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.However, "auto" does not include "mobile equipment".
5. "Bodily injury" means physical:
  - a. Injury;
  - b. Sickness; or
  - c. Diseasesustained by a person and, if arising out of the above, mental anguish or death at any time.
6. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or



**(3)** "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication.

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of "electronic data", means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;  
if such property can be restored to use by:
    - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
    - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D**. Liability And Medical Expenses Limits Of Insurance.
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement; or
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.  
Paragraph **f**. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.  
However, Paragraph **f**. does not include that part of any contract or agreement:
    - (1)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
      - (a)** Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
      - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or



- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered "autos".
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral, written, electronic, or any other manner of publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral, written, electronic, or any other manner of publication of material that violates a person's right of privacy;
  - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
  - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".
- 18.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19.** "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - (1) Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
    - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
    - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

**Policy Number:** 46 WEC AL3B5J

**Endorsement Number:**

**Effective Date:** 04/15/21

Effective hour is the same as stated on the Information Page of the policy.

**Named Insured and Address:** LUCK DESIGN TEAM LLC

9600 ESCARPMENT BLVD STE 754-4

AUSTIN TX 78749

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with

respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

### **Schedule**

1. ( ) Special Waiver  
Name of person or organization
  
- (X) Blanket Waiver  
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
  
2. Operations:  
All Texas Operations
  
3. Premium:  
The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
  
4. Advance Premium: