

**Consultant Services Agreement Between the
City of Bryan and MFE, LLC.**

This Consultant Services Agreement (“Agreement”) is executed to be effective on the **1st** day of **October, 2019**, by and between the City of Bryan, a Texas home-rule municipal corporation, (“CITY”) and MFE, LLC., a Texas limited liability company, (“Consultant”).

1. Scope of Services

In consideration of the compensation stated below, Consultant agrees to provide CITY with the professional consulting services as described in the Statement of Work, attached hereto as Attachment “A”, and which services may be more generally described as follows:

A. Professional Real Estate/Business Development Consulting and Project Management Services.

B. Regional Park Project Management Services.

2. Payment

In consideration of Consultant’s provision of the professional services in compliance with all terms and conditions of this Agreement, CITY shall pay Consultant according to the terms set forth in Attachment “A”. This Agreement has a not-to-exceed amount of One Hundred Sixty-Eight Thousand Dollars and No/100 (\$168,000.00); \$48,000 per year for Professional Real Estate/Business Development Consulting and Project Management Services and \$120,000 per year for Regional Park Project Management services. For professional service, Consultant will be paid a flat fee of \$4,000.00 a month for Professional Real Estate/Business Development Consulting and Project Management Services and a flat fee of \$10,000 a month for Regional Park Project Management Services, in advance within the first ten (10) days of each month. Expenses shall be reimbursed upon invoice, within thirty (30) days.

3. Time of Performance

A. All work and other professional services shall be performed during the term of this contract, which begins October 1, 2019 and ends September 30, 2020.

B. The Consultant shall be prepared to provide the professional services in an expedient and efficient manner in order to complete the work by the times specified.

4. Performance Standards, Indemnification’s, & Release.

A. As an experienced and qualified consulting professional, the Consultant shall provide information that reflects normal professional and industry standards, procedures, and performances. The Consultant shall perform the services as set forth in the Statement of Work (Attachment “A”), the selection and supervision of personnel, and the performance of other services under this Agreement, pursuant to the standard of performance in the profession. The Consultant will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Agreement. Approval of CITY shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall CITY’s approval be deemed to be the assumption of responsibility by CITY for any defect or error in the aforesaid documents prepared by the Consultant, its employees, or subcontractors.

B. Within sixty (60) days from the date of providing any service or item hereunder, should such service or item provided by Consultant be found to be defective by CITY, CITY shall identify the nature of such deficiency in writing and Consultant shall, within thirty (30) days from the date of receipt of such notice attempt to correct, re-perform or replace the defective services or item. **THE FOREGOING**

WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

C. Consultant is an independent Contractor. Consultant shall be responsible for the professional services and the final work product contemplated under this Agreement. Except for materials furnished by CITY, Consultant shall supply all materials, equipment, and labor required for professional services to be provided under this Agreement. Consultant shall have ultimate control over execution of professional services. Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and CITY shall have no control of or supervision over the employees of Consultant or any of Consultant's subcontractors.

D. Both parties shall employ reasonable standards for promoting safety, health and environmental protection and for ensuring safe working environments for their personnel. Whenever Consultant's performance of the work involves visits to or work on CITY controlled facilities or sites, CITY is responsible for the adequacy, stability, safety, and legal compliance of the working environment, including reasonable measures to mitigate or control relevant risks. Consultant must at all times exercise reasonable safety precautions and comply with all existing safety rules, regulations and procedures for site safety. Consultant shall, likewise, be responsible to see that its agents, employees and subcontractors exercise reasonable safety precautions and are in compliance with all existing safety rules, regulations and procedures for site safety. It is expressly understood and agreed that CITY shall not be liable or responsible for the negligence of Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons. CITY shall inform Consultant without undue delay of: (i) any actual or potential health, safety and environmental risk of which CITY is aware and which is reasonably relevant to the performance of the work; and (ii) any of CITY's implemented or planned measures against such risks that CITY requires Consultant's personnel to adhere to. Consultant or its personnel may refuse to carry out any activity, or visit any area or site, if Consultant or its personnel in their sole discretion consider that relevant risks are unacceptable or not adequately addressed, contained, or otherwise mitigated. Any such decision shall suspend both parties' obligations under this Agreement without any liability or penalties until the parties have agreed on how to proceed.

E. Responsibility for damage claims (indemnification): Consultant shall defend, indemnify and save harmless CITY and all its officers, agents, and employees from third party suits, actions, or claims brought for or on account of any death, bodily injury or direct property damage to the extent caused by Consultant's negligent performance of the work, or by or on account of claims or amounts recovered under the Worker's Compensation Law or other law, ordinance, order or decree. Consultant shall defend, indemnify and save harmless CITY, its officers, agents and employees in accordance with this indemnification clause regardless of whether the injury or damage is caused in part by CITY, its officers, agents or employees; however such indemnification shall extend only to that portion of the damage caused by Consultant's negligence. CITY agrees, to the extent permitted by law, to defend, indemnify and hold Consultant harmless from any suits, actions, or claims arising out of CITY's negligent performance of its obligations hereunder.

In no event shall either party be liable to the other for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost profits or revenues even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages. The liability of Consultant for any claim whatsoever related to or arising under this Agreement, including any cause of action in Agreement, tort or strict liability, shall not exceed the total amount of payments made to Consultant hereunder or \$100,000, whichever is less.

F. Notwithstanding anything contained in this Agreement to the contrary, due to the advisory nature of the work being performed under the Scope of Work in this Agreement, CITY agrees that Consultant is operating in an advisory position only.

5. Consultant's Insurance.

Consultant agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this Agreement with the CITY. All parties to this Agreement hereby agree that Consultant's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

A. Consultant must deliver to CITY a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) business days of notification of the CITY's intent to award an Agreement. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) business days may cause the Agreement to be rejected. CITY reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent; however no modification in insurance shall be enforceable unless agreed to in writing by the Consultant.

1. Workers' Compensation Insurance & Employers' Liability Insurance - In consideration of CITY's waiver of the requirement of providing evidence of Workers' Compensation Insurance & Employers' Liability Insurance, Consultant agrees that only Steven J. Manchester shall perform the work pursuant to this Agreement.
2. Business Automobile Liability Insurance - Consultant shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Consultant shall provide Waiver of Subrogation in favor of the CITY and its agents, officers, officials, and employees.

B. Policy Limits - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Consultant agrees to endorse CITY and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

C. Deductibles, Coinsurance Penalties & Self-Insured Retention - Consultant may maintain reasonable and customary deductibles. Consultant shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

D. Acceptability of Insurers - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-: VI or better by AM Best Insurance Rating or equivalent.

E. Evidence of Insurance - A valid certificate of insurance verifying each of the coverages required shall be issued directly to the CITY within ten (10) business days by the successful Consultant's insurance agent or insurance company after Agreement award. Endorsements must be submitted with the certificate. No Agreement shall be effective until the required certificates have been received and approved by CITY. Renewal certificates shall be sent a within thirty (30) days of renewal to coverage expiration. The certificate of insurance and all notices shall be sent to:

City of Bryan
Attn: Risk Management
Post Office Box 1000
Bryan, TX 77805

Failure of the CITY to demand evidence of full compliance with these insurance requirements or failure of the CITY to identify a deficiency shall not be construed as a waiver of Consultant's obligation to maintain such insurance.

F. Notice of Cancellation, Non-renewal, Material Change, and Exhaustion of Limits - Consultant must provide minimum thirty (30) days prior written notice to the CITY of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. CITY is notified a required insurance coverage will cancel or non-renew during the Agreement period, the Consultant shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. CITY reserves the right to withhold payment to Consultant until coverage is reinstated.

G. Consultant's Failure to Maintain Insurance - If Consultant fails to maintain the required insurance, CITY shall have the right, but not the obligation, to withhold payment to Consultant until coverage is reinstated or to terminate the Agreement.

H. No Representation of Coverage Adequacy - The requirements as to types and limits, as well as the CITY's review or acceptance of insurance coverage to be maintained by Consultant, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Agreement.

6. Termination

A. CITY may terminate this Agreement at any time upon thirty (30) calendar day's written notice. Upon receipt of such notice, Consultant shall cease work immediately. Consultant shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, Consultant fails to fulfill its obligations under this Agreement, or if Consultant violates any of the agreements of this Agreement, and fails to cure same within ten (10) business days of CITY's written notice of its intent to terminate the Agreement, CITY has the right to terminate this Agreement. Consultant will be compensated for the services performed in accordance with Attachment "A" before the termination date.

C. No term or provision of this Agreement shall be construed to relieve the Consultant of liability to CITY for damages sustained by CITY because of any breach of Agreement by Consultant. CITY may withhold payments to Consultant for the purpose of setoff until the exact amount of damages due CITY from the Consultant is determined and paid.

7. Miscellaneous Terms.

A. This Agreement has been made under and shall be governed by the laws of the State of Texas. Jurisdiction and venue for any matter arising out of this Agreement shall be a court of competent jurisdiction located in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

If intended for CITY, to:

Name: Kean Register
Title: City Manager
Address: Post Office Box 1000, Bryan, Texas 77805

If intended for Consultant, to:

Name: Steven J. Manchester
Title: President
Address: 1980 Post Oak Blvd., Ste. 1500, Houston, Texas 77056

C. No waiver by either party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Agreement represents the entire and integrated agreement between CITY and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by written instrument approved and executed by the parties.

E. This Agreement and all rights and obligations contained herein may not be assigned by Consultant without the prior written approval of CITY.

F. Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. Consultant must obtain all necessary permits and licenses required in completing the work and providing the services required by this Agreement.

G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

[signature page follows]

CITY OF BRYAN, TEXAS

MFE, L.L.C.

Andrew Nelson
Mayor

Steven J. Manchester
President

Date:_____

Date:_____

ATTEST

Mary Lynne Stratta
City Secretary

APPROVED AS TO FROM

Janis K. Hampton
City Attorney

ATTACHMENT "A"

MFE Scope of Work and Deliverables:

- I. Professional Real Estate/Business Development Consulting and Project Management Services.**
 - II. Regional Park Project Management Services.**
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- I. Scope of Work – Professional Real Estate/Business Development Consulting and Project Management Services.**
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MFE shall provide Services and Deliverable(s) as follows:

MFE will provide real estate and business consulting for economic development within the City of Bryan by providing research, analysis, and expert recommendations on new business development in both retail and industrial/manufacturing.

Deliverable Materials

- Status reports as required by the City Manager or the City Manager's designee.
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- II. Scope of Work – Regional Park Project Management Services**
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MFE shall provide Services and Deliverable(s) as follows:

MFE will provide overall leadership and serve as the Project Director that is responsible for the entire successful execution of the City of Bryan Regional Park project. MFE's primary responsibilities are to plan, organize, coordinate, and direct activities concerned with the construction and maintenance of structures, facilities, and systems. MFE, as the Project Director, shall also participate in the conceptual development of a construction project and oversee its organization, estimating, scheduling, and implementation. Additionally, the Project Director (with the help of the City of Bryan Project Manager or whomever the City Manager designates) will perform the duties as stated in this description and to provide assistance as assigned.

Specific Duties:

1. During the pre-construction phase, attend all design meetings, continuously evaluate the materials and products being proposed for constructability and feasibility. Oversee the preparation of estimates for the conceptual schematics, and design development stages. Initiate and coordinate the full design team efforts in the value engineering processes.
2. Schedule the project in logical steps and budget time required to meet deadlines.
3. Determine labor requirements and dispatch contractors to construction sites.
4. Inspect and review projects to monitor compliance with building and safety codes, and other regulations.
5. Interpret and explain plans and contract terms to administration staff, workers, and clients, representing the City.
6. Negotiate contracts and revisions, charges and additions to contractual agreements with architects, consultants, clients, suppliers and subcontractors.
7. Ensure that all necessary permits and licenses are obtained.

8. Direct and supervise team members in the office and on site.
9. Study job specifications to determine appropriate constructions means and methods.
10. Solicit, negotiate, select, contract, and oversee subcontractors who complete specific elements of the project.
11. Requisition supplies and materials to complete construction projects, as necessary.
12. Prepare and submit budget estimates and progress and cost tracking reports.
13. Develop and implement quality control programs.
14. Take actions to deal with the results of delays, bad weather, or emergencies at construction site.
15. Confer with supervisory personnel, owners, contractors, and design professionals to discuss and resolve matters such as work procedures, complaints, and construction problems.
16. Plan, organize, coordinate, and direct activities concerned with the construction and maintenance of structures, facilities, and systems.
17. Investigate damage, accidents, or delays at construction sites, to insure that proper procedures are being carried out.
18. Evaluate construction means and methods to determine cost-effectiveness of plans.
19. Be responsible for all contractors associated with the project.
 - a. Contractors report to the Project Director.
20. Be responsible for recommending change orders, process revisions, etc.
 - a. Project Director processes changes and is responsible for all budgets associated with the project.

Deliverable Materials

- Monthly status reports as required by the City Manager or the City Manager's designee.