

STATE OF TEXAS

§

COUNTY OF DALLAS

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ENGINEERING AGREEMENT

This Engineering Agreement ("Agreement") is entered into by and between the City of Farmers Branch, Texas, a home rule municipality (hereinafter called "OWNER"), and THE C.T. BRANNON CORPORATION a corporation of Tyler, Smith County, Texas (hereinafter called the "ENGINEER") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

ARTICLE 1: PROJECT DEFINITION AND SCOPE OF SERVICES:

- 1.01 Owner's project is generally identified as a new outdoor and indoor swimming pool and aquatic facility located at the city's recreation center at 14050 Heartside Drive in Farmers Branch, Texas, on the site of the present municipal pool, playground and skate park to be demolished under this project, (hereinafter called "Project").
- 1.02 Owner employs Engineer, and Engineer agrees to perform the professional services identified in the Scope of Services attached hereto as Exhibit "A" and incorporated herein.
 - A. Engineer shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should Owner require additional services not included under this Agreement, Engineer shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by Owner; and without decreasing the effectiveness of the performance of services required under this Agreement.
 - B. To the extent reasonably necessary for Engineer to perform the services under this Agreement, Engineer shall be authorized to engage the services of any agents, assistants, persons, or corporations that Engineer may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of Owner. The cost of such personnel and assistance shall be a reimbursable expense to Engineer only if authorized in writing in advance by Owner.
 - C. Engineer shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all services set forth in the Scope of Services.
- 1.03 Engineer may furnish services in addition to the basic services listed in Exhibit A and Section 1.02, if authorized in writing by Owner. Owner shall not be responsible for Engineering fees and costs for services in addition to the services listed in Exhibit A and Section 1.02 unless said additional services are pre-authorized in writing by Owner. Additional Services may include the following:
 - A. Material changes in the scope, size, complexity, or character of construction of the Project requested in writing by Owner.
 - B. Revisions, elected by Owner after giving previous approval of studies, reports, design documents, drawings or specifications. No additional fees shall be owed Engineer by Owner if the revision(s):

- 1) is required by regulating authorities or to bring the design into compliance with any applicable statute, code, or ordinance, or
 - 2) is required as a result of Engineer's error or omission.
- C. Furnishing of additional copies (beyond the basic construction contract sets) of reports and additional prints of drawings, specifications, and construction contract documents.
- 1) Upon payment of all amounts due Engineer, all materials and reports prepared by Engineer in connection with this Agreement shall become the property of Owner. Owner shall have the right to publish, disclose, distribute and otherwise use such materials and reports only for those purposes for which they were intended. Subject to the foregoing, Engineer shall, upon completion of the services or earlier termination, provide Owner with reproductions of all drawings, materials, specifications, reports, maps, and exhibits prepared by Engineer pursuant to the Scope of Services. The reproductions shall include 24" x 36" blackline 3 mil reproducible mylars of the completed drawings plus a compact disc containing all construction plan sheets in a ".dwg" format and a scanned 24" x 36" black & white "Tiff" images at 400 dpi resolution and in electronic format as requested by Owner or required in Exhibit "A".
- D. Investigations involving detailed consideration of operation, maintenance, and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, and valuations; detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by Owner.
- E. Additional or extended services during the construction made necessary by (1) work damaged by fire, flood, wind, vandalism, acts of God, or other cause by construction, (2) prolongation of the construction contract time by more than 25 percent, (3) acceleration of work schedules involving services beyond normal working hours, (4) construction contract default due to delinquency or insolvency of the construction contractor.
- F. The preparation of instruction manuals or of operation and maintenance manuals beyond those furnished with fixtures and equipment incorporated into the Project as described in Exhibit "A".
- G. Additional time and expense necessitated by out-of-town travel required by Engineer other than visits to the Project site and consultation in Owner's office.
- H. Time and expense when serving as expert witness or consulting with Owner regarding actual or potential litigation concerning the Project. Provided however, Owner shall not be responsible for the cost of Engineer's time or expenses incurred by Engineer if a claim has been made against Engineer or Engineer is a party to the litigation.
- I. Service provided by a Resident Project Representation (RPR) during the construction phase of the Project. If requested in writing by Owner, one or more full-time RPR will be furnished and directed by Engineer in order to provide more extensive representation at the

Project site during the construction phase. This paragraph, however, shall not restrict Owner from employing other persons for the purpose of full or part time inspection of the Project.

- J. Preparation of boundary survey, plats, legal descriptions, or deeds; record search, abstracting of ownership or other related surveyor work.

ARTICLE 2: PROFESSIONAL FEES AND EXPENSES:

2.01 Basis of Payment – Fixed Fee

- A. Owner shall pay Engineer for the services described in Exhibit A, a fixed fee in a total amount not to exceed Three Hundred and Sixty-Four Thousand Dollars (\$364,000.00), which shall include the services of sub-consultants enumerated in Exhibit “A” including architect(s), structural engineers, mechanical engineers, aquatic engineers, civil engineers, heating-ventilation-air conditioning engineers, landscape architects, interior designers, surveyors and geotechnical consultants.

- 2.02 Additional Services: For additional services, authorized by Owner in writing, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees multiplied by their standard hourly rates for each applicable labor designation; plus reimbursable expenses and Engineer’s consultants’ charges, if any. Engineer’s standard hourly rates are provided in the document attached hereto as Exhibit “B” and incorporated herein.

ARTICLE 3: PAYMENT PROCEDURES:

- 3.01 Engineer shall submit a detailed invoice to Owner each month for services performed and expenses incurred during the prior month.
- 3.02 Payments shall be made payable to The C. T. Brannon Corporation and remitted to the mailing address: P.O. Box 7487, Tyler, Texas 75711, or physical address: 1321 S. Broadway Ave., Tyler, Texas 75701.
- 3.03 Unless otherwise provided herein, payment to Engineer shall be monthly based on Engineer’s monthly progress report and detailed monthly itemized statement for services that shows the names of Engineer’s employees, agents, contractors performing the services, the time worked, the actual services performed the rates charges for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to Owner. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. Owner shall pay such monthly statements within thirty (30) days after receipt and Owner verification of the services and expenses unless otherwise provided herein. The final payment of the compensation shall be made after satisfactory completion of the services following Owner’s acceptance of the design, and the submittal of “AS BUILT” drawings”, or record drawings, as applicable.

ARTICLE 4: TERMINATION:

- 4.01 Owner may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to Engineer. In the event suspension or termination is without cause, payment to

Engineer, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Owner to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Owner.

- 4.02 Should Owner require a modification of this Agreement with Engineer, and in the event Owner and Engineer fail to agree upon a modification to this Agreement, Owner shall have the option of terminating this Agreement and Engineer's services hereunder at no additional cost other than the payment to Engineer, in accordance with the terms of this Agreement, for the services reasonably determined by Owner to be properly performed by Engineer prior to such termination date.

ARTICLE 5: ADDITIONAL OBLIGATIONS OF ENGINEER:

- 5.01 The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be of the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties or guarantees, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- 5.02 Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

ARTICLE 6: INSURANCE REQUIREMENTS

- 6.01 Engineer shall, during the term hereof, maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance covering bodily injury, death and property damage including the property of Owner, its officers, contractors, agents and employees (collectively referred to as the "Owner Indemnitees") insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits on a per project basis of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage and Personal and Advertising Injury with a minimum per occurrence limit of One Million Dollars (\$1,000,000). This policy shall be primary to any policy or policies carried by or available to the third party; (ii) policy of automobile liability insurance covering all operations of the Engineer pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Engineer's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate, covering negligent acts, errors and omissions by Engineer, its sub-contractors, consultants and employees in the performance of professional services.
- 6.02 All insurance shall be endorsed to provide the following provisions: (1) name Owner, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against Owner for injuries, including death, property damage, or any other loss to the extent the

same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to Owner that indicates the insurance company will provide to Owner at least a thirty (30) prior written notice for cancellation, non-renewal, and/or material changes of the policy.

- 6.03 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by Owner.
- 6.04 A certificate of insurance and policy endorsements evidencing the required insurance shall be submitted prior to commencement of services. On every date of renewal of the required insurance policies, Engineer shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to Owner. In addition, Engineer shall within ten (10) business days after written request provide Owner with Certificates of Insurance and policy endorsements for the insurance required herein. The delivery of the Certificates of Insurance and policy endorsements to Owner is a condition precedent to the payment of any amounts due to Engineer by Owner. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this Agreement. All policies and endorsements shall remain in effect for not less than four (4) years after termination of this Agreement, abandonment of the work or services or the substantial completion of the work and services provided pursuant to this Agreement.

ARTICLE 7: ADDITIONAL OBLIGATIONS OF OWNER:

- 7.01 Owner shall furnish, at Owner's expense, all information, reports, data, surveys and instructions available to Owner and required by Engineer to perform this Agreement, including but not necessarily limited to the following:
 - A. All information concerning Owner's requirements for the Project;
 - B. All reasonably available information pertinent to the site of the Project including all previous reports, construction documents, and any other data relative to design or construction of the Project;
 - C. Owner's written decision, within a reasonable time, on matters presented to Owner by Engineer that require a decision from the Owner, so as not to delay work by the Engineer;
 - D. Previous geotechnical reports on the Project site.

Engineer may use such information, requirements, reports, data, surveys and instructions in performing his services and is entitled to rely upon the accuracy and completeness thereof.

- 7.02 Owner shall make all necessary provisions for Engineer to lawfully enter upon public and private lands required for Engineer to perform his work under this Agreement. Owner shall obtain all easements, right-of-way, and fee simple lands required by State Regulatory Agencies and/or for the construction of the Project and bear all costs incident thereto including surveying, abstracting, easement preparation and appraisals.

- 7.03 If required, Owner shall provide advertisements to solicit bids or proposals on the Project, open the bids or proposals at the appointed time and place, and pay for all costs related to the bid/proposal process.
- 7.04 Owner shall designate in writing, a person to act as Owner's representative with respect to the work to be performed under this Agreement. The designated person shall have authority to transmit instructions, receive information, and define Owner's position regarding materials, equipment and systems pertaining to the Project and work to be performed under this Agreement.
- 7.05 If Owner becomes aware of any defect in the Project, then Owner shall promptly give the Engineer written notice of the defect.
- 7.06 Owner shall pay all fees imposed by local, State, or Federal regulatory agencies to review and approve of completed plans and specifications requiring regulatory approval.

ARTICLE 8: LIMITATIONS:

- 8.01 Engineer shall at no time supervise, direct, control, or have authority over any contractor's work. Nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor. The term "Contractor" for this agreement shall be interpreted to include a Construction Manager – Agent hired by Owner to oversee construction of the work or any individual trade contractors providing work to Owner.
- 8.02 Engineer and Owner agree job site safety, compliance with OSHA regulations, safety precautions and programs incident thereto, for security or safety at the Project site is the responsibility of the contractor. Engineer shall not be obligated herein to make job site safety surveys or inspections nor to protect, notify, block or defend any other persons from hazards arising out of the construction of the Project.
- 8.03 Engineer shall not be responsible for any failure of a contractor to comply with any law, regulation, or contract applicable to the contractor's work on the Project.
- 8.04 Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and said contractor.
- 8.05 Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, their agents, employees or representatives, performing construction work or providing materials for the Project. Engineer shall not be responsible for any interpretation, clarification or decision made concerning the requirements of the construction contract made by others.
- 8.06 Owner acknowledges that all documents, including original drawings, Engineer's opinion of probable cost, specifications, field notes, and data are not intended or represented to be suitable for: use on the Project unless completed by Engineer; use or reuse by Owner or others on extensions of the Project, use on any other project, or for any other use or purpose, without the written verification or adaption by Engineer. Any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk.

- 8.07 Engineer's opinion of probable total project cost is based on Engineer's experience and expertise. Expertise notwithstanding, Engineer does not guarantee the accuracy of such Engineer's opinion of probable cost as compared to the successful contractor's bid, or the final construction cost. Owner acknowledges that Engineer has no control over the cost of labor and materials, or other competitive bidding and market conditions.
- 8.08 Materials, products, and equipment specified by Engineer shall, to the best of Engineer's knowledge, conform to existing codes and regulations. However, some future determination may render a material, product, or equipment as unsafe, hazardous, or otherwise unacceptable for similar uses.
- 8.09 If Engineer or any other party encounters a Hazardous Environmental Condition, which includes the presence of asbestos, PCBs, petroleum, hazardous substances or wastes as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials, then Engineer may, at its option, suspend performance of services on the portion of the Project affected thereby until Owner: (1) abates, remediates, or removes the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations, provided five (5) days written notice of said suspension is provided to the Owner.

ARTICLE 9: GENERAL TERMS

- 9.01 This Agreement shall not be assigned by or transferred by Owner or Engineer without the written consent of the other party.
- 9.02 Nothing contained in this Agreement shall be construed to create, impose, or give rise to any duty or personal liability owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them, or any office or agent of any public body which may be a party hereto.
- 9.03 Nothing contained in this Agreement shall be construed to create a contractual relationship with or cause of action in favor of, a third party, against either Owner or Engineer. Engineer's services under this Agreement are being performed solely for Owner's benefit, and no other entity shall have any claim against Engineer because of this Agreement or the performance or nonperformance of services hereunder.
- 9.04 All reports, information, data, and drawings prepared or assembled by Engineer under this Agreement shall be kept confidential by Engineer, and shall not be made available to any third party without the prior written approval of Owner, unless disclosure is required by law.
- 9.05 This Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

- 9.06 All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Owner and Engineer survive the completion of the services hereunder and the termination of this Agreement.
- 9.07 This Agreement (including 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 executed by Owner and Engineer.
- 9.08 Any provision of this Agreement later held to be legally unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.
- 9.09 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing), or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Owner, to

Attn: Gary D. Greer, City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, LLP
1800 Lincoln Plaza
500 N. Akard Street
Dallas, Texas 75201

If intended for Engineer, to:

Attn: _____
The C.T. Brannon Corporation
1321 S. Broadway Ave.
Tyler, Texas 75701

- 9.10 Indemnification. OWNER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE ENGINEER PURSUANT TO THIS AGREEMENT. ENGINEER HEREBY WAIVES ALL CLAIMS AGAINST OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "OWNER INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF OWNER OR BREACH OF OWNER'S OBLIGATIONS HEREUNDER. ENGINEER AGREES TO INDEMNIFY AND SAVE HARMLESS OWNER INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF ALL THIRD PARTY PROPERTY TO THE EXTENT CAUSED BY ENGINEER'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY

REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF ENGINEER, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE OWNER INDEMNITEES, IN WHOLE OR IN PART, IN WHICH CASE ENGINEER SHALL INDEMNIFY OWNER INDEMNITEES ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO ENGINEER AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). ENGINEER'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY ENGINEER UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

- 9.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
- 9.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- 9.13 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2013.

OWNER:

CITY OF FARMERS BRANCH, TEXAS

By: _____
Gary D. Greer, City Manager

ATTEST:

Angela Kelly, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

EXECUTED this _____ day of _____, 2013.

ENGINEER:

THE C.T. BRANNON CORPORATION

By: _____
Calvin T. Brannon, P.E., President

ATTEST:

Name: _____

Title: _____

EXHIBIT A
SCOPE OF SERVICES
FARMERS BRANCH AQUATIC PARK & FITNESS POOL

This EXHIBIT serves to lay out the usual and customary services to be provided by The C. T. Brannon Corporation and its sub-consultants (“Engineer”) to the City of Farmers Branch, Texas (“Owner”) in regards to the Project, as said term is defined in this Agreement.

The following work is to be performed by Engineer under the AGREEMENT attached hereto:

1. Pre Design Services:

- a. Engineer will employ and pay for services of a geotechnical testing laboratory and consultant acceptable to Owner for the purposes of drilling, sampling, classifying, and providing engineering soil parameters necessary for the design of foundations and other structures. The fees for these services are included in the Professional Fees to be paid by Owner to Engineer.
- b. Engineer will engage and coordinate services of a surveying firm acceptable to Owner for the purposes of providing topographic surveys of the subject property necessary for the design of aquatic facilities and ancillary buildings. The fees for these services are included in the Professional Fees to be paid by Owner to Engineer.

2. Building Design (Architectural Services)

- a. Included on the design team is a competent architect with experience in architectural design of indoor and outdoor pool building support facilities. For this Project, the services of the architect include design of:
 - 1) A building for water park manager, lifeguards, aquatic staff, over-the counter-food and beverage sales, first aid and park admissions control.
 - 2) A building housing an indoor pool, restrooms, locker rooms, small meeting room, facility manager office, control desk, and mechanical spaces.
- b. The services of the architectural team include the services of architects, structural, electrical, mechanical, heating-ventilation-air conditioning engineers, and interior designers.
- c. The following services are specifically EXCLUDED from the services under this Agreement:
 - 1) Services of a security consultant, including design of CATV, burglar alarm, and/or electronic surveillance.
 - 2) Services of a kitchen consultant for a full commercial kitchen, such services not being contemplated in the Project concept plan.

- 3) Design of Information Technology (computer/internet) services other than providing conduit and cables for such equipment as Owner may specify and purchase.
- 4) Design of electronic message boards.

3. Site Design

- a. Site layout design for fencing, walks, decks, planters, landscape areas, and screening.
- b. Design of ADA compliant access routes, walks, gates, and parking.
- c. Modifications to the parking layout.
- d. Site grading and drainage design.
- e. Landscaping and irrigation design.
- f. Provide demolition plans.
- g. Provide erosion control plans and prepare SW3P (storm water pollution prevention plan)
- h. Design gas, water and sewer extensions for serving the Project.

4. Geometric configuration:

- a. Design of shapes, depths, dimensions, of all pools, splash pads, fountains or other water features.
- b. Establish coordinate layout sheet and/or dimensions to structures.
- c. Size and design structures for pool equipment such as vaults and pits.
- d. Coordinate with others the sizes of rooms or structures required for pool equipment (mechanical rooms for example).
- e. Design the geometry of decks, walks, and bridges within the pool areas.

5. Pool mechanical systems:

- a. Provide sizes and locations of all pipes, fittings and valves for pool and play features.
- b. Size pump and filter circulation systems for all pools.
- c. Size pumps, filters, and piping for fountains, play features and other accessories not part of the pool circulation/filtration loop.
- d. Size and design backwash or drain systems design as required within the pool mechanical spaces. Design outfall sewers if needed.

- e. Selection and sizing of chemical feed systems.
- f. Selection and sizing of chemical monitoring/control equipment and systems.
- g. Select, size and design pool heating [or chilling] systems including solar, heat exchanger, fossil-fuel pool boiler heaters, or electric heaters where required.
- h. Select, size and design aquatic feature pumps and piping.
- i. Design make-up water supply and overflow piping.

6. Electrical systems design:

- a. Electrical distribution design from the public utility service point.
- b. Distribution to mechanical and lighting systems from the distribution panels.
- c. Electrical distribution for buildings.
- d. Electrical distribution for pool equipment.
- e. Design underwater lighting.
- f. Site overhead lighting.
- g. Installing conduit and conductors for connection by others of Owner-purchased computer and electronic surveillance equipment.
- h. Electrical bonding and grounding system design.

7. Pool structures:

- a. Engineer will design underlying foundations and soil preparation for buildings, pool structures and features based on an owner-provided soils report by a competent geotechnical firm.
- b. Engineer designs site stairs, ramps, decks, bridges and walks.
- c. Engineer provides structural design of pits, surge tanks, and other vessels related to the pool structures including pool trim and finishes.

8. Aquatic features:

- a. Engineer will consult with Owner, select, design and theme, solicit pricing from various vendors, and assist in ordering manufactured water features.
- b. Engineer designs the foundations and support for water features.

- c. Engineer will design the mechanical piping systems for water features including the pipe and valve manifolds and interactive play controllers.

9. Miscellaneous Services to Be Provided:

- a. Graphic design for building signage, directional signage, restroom signage, or similar graphics.
- b. Handicapped signage per the ADA.
- c. Engineer will provide the services of a Texas Accessibility Specialist for the required review of the plans and inspection of the final project.
- d. Coordination with Owner's appointed Construction Manager for the construction of the Project by providing digital designs and interpretation of documents provided by Engineer.

10. Resident Project Representative:

- a. Specifically EXCLUDED from this Scope of Work are the services of a resident project representative or inspector.
- b. Engineer or his sub-consultants or designated employees will make periodic and unscheduled visits to the site in accordance with the terms of this Agreement.

11. General:

Engineer shall serve as Owner's professional representative in all phases of the Project as directed and as authorized and shall give consultation and advice to Owner during the performance of Engineer's services.

A. Preliminary Report Phase: During the preliminary report phase, Engineer shall:

- 1. Consult with Owner to determine the requirements of the Project.
- 2. Prepare a preliminary engineering study and/or report on the Project. The preliminary engineering report may be written or informal in nature, depending on the scope of the Project. In either case, the preliminary report to include sufficient detail to indicate clearly the problems involved the alternate solutions available to Owner, a preliminary engineer's opinion of probable total cost for the Project, and to set forth Engineer's recommendation. Schematic layouts and sketches will be provided, if the complexity of the project so warrant.
- 3. Assist Owner in the selection of and contracting with a surveyor of Owner's choice to make any necessary surveys of existing right-of-way, topography, utilities or other field data required for proper design of the Project.

B. Design Phase: After authorization from Owner, to proceed with the final design phase, Engineer shall:

1. On the basis of the approved preliminary design documents prepare detailed construction drawings and specifications for the Project.
2. Furnish to Owner engineering data for and assist in the preparation of the required documents so that Owner may secure approval of such governmental authorities as have jurisdiction over design criteria applicable to the Project.
3. Advise Owner of any adjustment of the engineer's opinion of probable total cost for the Project caused by changes in scope, design requirements or construction costs, and furnish a revised engineer's opinion of probable total cost for the Project based on the completed drawings and specifications.
4. Furnish five (5) copies of the construction documents consisting of printed plans and technical specifications for use by the Construction Manager. Furnish additional digital files suitable for reproduction of the plans in PDF and WORD formats.
6. Assist the Owner and Owner's Construction Manager-Agent in obtaining and evaluating bids/proposals and awarding contracts for the construction of the Project.
7. Provide technical assistance in preparation of application forms for permits and any other applications made by Owner in connection with the Project, including the preparation of submittal drawings.

C. Construction Phase: After award of construction contract by Owner, Engineer shall:

1. Establish benchmarks and centerline control only for the construction work as a part of the original survey work. The contractor shall determine alignment and grade of work to be constructed from these reference marks.
2. Make periodic visits to the Project site and, when deemed appropriate by Engineer in the exercise of his professional judgment, to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the plans, specifications, and construction contract documents. Engineer will **NOT**:
 - (a) be required to make exhaustive or continuous on-site reviews to check the quality or quantity of the work;
 - (b) be responsible for having quality control testing done;
 - (c) be responsible for the techniques and sequences of construction;
 - (d) be responsible for the Contractor's failure to perform the construction work; and
 - (e) be responsible for job site safety,

Engineer will endeavor to guard Owner against defects and deficiencies in the work of the Contractors, and may disapprove work as failing to conform to the plans and specifications, and construction contract documents.

3. Check samples, catalog data, laboratory testing, shop drawings, mill tests of materials and equipment, and other data which the Contractor is required to submit, only for the conformance with the design concept of the Project and general compliance with the information given by the plans, specifications, and construction contract documents; and accept or reject all such submittal data furnished by the Contractor, materials used, and work performed by the Contractor as either substantially complying or not complying with the intent of the plans, specifications, and construction contract documents.
4. Consult and advise with Owner, act as Owner's representative at the Project site, issue all instructions of Owner to the construction contractors that do not conflict with good engineering practice, and prepare routine change orders as required.
5. Owner's Construction Manager - Agent will receive, review and recommend payment for all progress payments to contractors and vendors on the Project under a separate agreement with Owner. Engineer shall review and make comments to the Construction Manager – Agent and, based on his on-site observations as an experienced and qualified design professional and on his review of the applications for payment, advise the Construction Manager – Agent of any apparent discrepancies in the amount requested by the contractors or vendors.
6. Conduct, in company with Owner's representative and Construction Manager - Agent, a final review of the Project for conformance with the design concept of the Project and general compliance with the plans, specifications, and construction contract documents, and recommend in writing final payment to the Contractor(s).
7. Furnish Owner, a set of record prints of drawings and addendum drawings showing those changes made during the construction period, based upon the marked up prints, drawings, and other data furnished by the Contractor to Engineer and which Engineer considers to be significant.

EXHIBIT B

ENGINEER'S STANDARD HOURLY RATES

This schedule shall only apply if additional work or expenses are authorized in writing and in advance by the Owner and these rates are not applicable to the basic services already included in the Agreement for Professional Services.

PERSONNEL

Charges include all salaries, salary expense, overhead and profit.

Principal, C. Terry Brannon, P.E.	\$ 195.00
Principal (Rea Boudreaux, P.E., Bob Breedlove, P. E., Kirk Bynum, P.E.)	\$ 140.00
Senior Project Manager	\$ 130.00
Project Manager	\$ 100.00
Licensed Engineer	\$ 85.00
Graduate Engineer I.....	\$ 60.00
Graduate Engineer II.....	\$ 65.00
Graduate Engineer III.....	\$ 75.00
Intern.....	\$ 30.00
Civil Technician.....	\$ 70.00
CAD Draftsman I.....	\$ 45.00
CAD Draftsman II.....	\$ 50.00
CAD Draftsman III.....	\$ 55.00
CAD Draftsman IV	\$ 60.00
Resident Project Representative	\$ 80.00
Construction Services I	\$ 45.00
Office Technician	\$ 70.00
Clerical I.....	\$ 25.00
Clerical II.....	\$ 40.00
Clerical III.....	\$ 45.00
Clerical IV.....	\$ 50.00

Billing Rates for personnel involved in legal matters (i.e. expert witness or other chargeable time) are 2.5 times the above published numbers.

EXPENSES

Reproduction	
B/W 8.5x11 per each	\$ 0.15
Colored prints 8.5x11 per each	\$ 1.00
Colored prints 11x17 per each.....	\$ 1.50
"C", "D" or "E" size Bond per each	\$ 5.00
"C", "D" or "E" size Vellum per each.....	\$ 10.00
"C", "D" or "E" size Mylar Film per each	\$ 10.00
"C", "D" or "E" size Color Bond per each.....	\$ 20.00
Travel per mile	\$ 0.55
Lodging and meals (Out of town trips).....	Actual Cost
Special Equipment	
GPS Trimble Pro XRS Backpack Unit, per half day or part thereof.....	\$ 30.00
Scanning	
"C", "D" or "E" sized Scanning of original per sheet (does not include plot)	\$ 50.00

Special contracted services such as reproduction, aerial photography, GPS (Global Positioning Satellite) surveys, contract surveying, geotechnical investigations, project models and artists renderings, and contract project representation is billed at the amount invoiced to us plus ten percent (10%).

EXHIBIT B TO ENGINEERING AGREEMENT
FARMERS BRANCH/CT BRANNON CORPORATION