

PROFESSIONAL SERVICES AGREEMENT
Professional Land Surveying

STATE OF TEXAS §

COUNTY OF KAUFMAN §

This contract, (the "Contract" or "Agreement"), effective as of the 18 day of February, 2020 (the "Effective Date"), is by and between the City of Forney, (the "CITY"), a Texas home rule municipal corporation, and Surdukan Surveying, Inc. ("SURVEYOR").

WITNESSETH

WHEREAS, the CITY desires to obtain professional surveying services related to the surveying City of Forney land parcels 30061 and 20400 KCAD Files (the "Activities"); and

WHEREAS, SURVEYOR has a professional staff experienced and is qualified to provide professional surveying services related to Activities, and will provide the services, as defined below, for the price provided herein, said price stipulated by CITY and SURVEYOR to be a fair and reasonable price; and

WHEREAS, the CITY desires to contract with SURVEYOR to provide professional surveying services related to the Activities and SURVEYOR desires to provide the Services related to same.

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Contract, the CITY and SURVEYOR hereby agree as follows:

ARTICLE I. TERM

The term of this Contract commences on the Effective Date and continues without interruption through the construction phase and project completion, as set forth in Exhibit "A" (the "Schedule"), attached to and made a part of this Agreement for all purposes. If the SURVEYOR determines that additional time is required to complete the Services, the City Manager, or his/her designee, may execute an agreement to grant up to an additional six (6) months of time so long as the amount of the consideration does not increase. An amendment to this agreement resulting in any increase in the amount of the consideration must be approved by the City acting through its governing body.

ARTICLE II. SERVICES AND COMPENSATION

A. SURVEYOR shall conduct all activities and within such timeframes, as set forth on Exhibit "A", attached hereto (the "Services").

B. SURVEYOR shall receive as consideration to be paid for the performance of the Services set forth in Exhibit "A", attached hereto (the "Compensation").

ARTICLE III. TERMINATION

A. General. CITY may terminate this Contract, for any reason or convenience, upon thirty (30) days written notice to SURVEYOR. In the event this Agreement is so terminated, the CITY shall only pay SURVEYOR for services actually performed by SURVEYOR up to the date SURVEYOR is deemed to have received notice of termination as provided herein.

B. Termination and Remedies. In the event, SURVEYOR breaches, any term and/or provision of this Contract the CITY shall be entitled to exercise any right or remedy available to it by this Contract, at law or equity, including without limitation, termination of this Contract and assertion of action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any other right or remedy and all other rights and remedies shall be cumulative.

ARTICLE IV. NON-ARBITRATION

The CITY reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the CITY shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, the former shall control.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

A. Existence. SURVEYOR is a corporation validly existing and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

B. Corporate Power. SURVEYOR has the corporate power to enter into and perform this Contract and all other activities contemplated hereby.

C. Authorization. Execution, delivery, and performance of this Contract and the activities contemplated hereby have been duly and validly authorized by all the requisite corporate action on the part of the SURVEYOR. This Contract constitutes legal, valid, and binding obligations of the SURVEYOR and is enforceable in accordance with the terms thereof.

D. Surveyor. Surveyor maintains a professional staff and employs, as needed, other qualified specialists experienced in providing the Services, and are familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the activities contemplated hereby.

E. Performance. SURVEYOR will and shall conduct all activities contemplated by this Contract in accordance with the standard of care, skill and diligence normally provided by a professional person in performance of similar professional Surveying services, and comply with all applicable laws, rules, and regulations, both state and federal, relating to professional surveying services, as contemplated hereby.

F. Use of Copyrighted Material. SURVEYOR acknowledges that any materials provided by SURVEYOR for use by CITY pursuant to this Contract shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other law, statute, rule, order, regulation or ordinance relating to the use or reproduction of materials. SURVEYOR shall be solely responsible for ensuring that any materials provided by SURVEYOR pursuant to this Contract satisfy this requirement and SURVEYOR agrees to indemnify and hold CITY harmless from all damages caused to CITY or by to which CITY is exposed on account of SURVEYOR's failure to perform this duty.

ARTICLE VI. SCOPE OF WORK

SURVEYOR shall accomplish the following:

Professional Surveying Services related to the surveying City of Forney land parcels 30061 and 20400 KCAD Files are defined in Exhibit "A", "Services".

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

SURVEYOR and CITY agree that SURVEYOR shall perform the duties under this Contract as an independent contractor and shall be considered as an independent contractor under this Agreement and/or in its activities hereunder for all purposes. SURVEYOR, in consultation with City, has the sole discretion to determine the manner in which the services are to be performed. During the performance of the Services under this Agreement, SURVEYOR and SURVEYOR's employees and/or sub-consultants,

will not be considered, for any purpose, employees or agents of the CITY within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

ARTICLE VIII. INSURANCE

SURVEYOR shall procure and carry, at its sole cost and expense through the life of this Agreement and for a period of at least five years following the termination or expiration of this Agreement, insurance protection as hereinafter specified, in form and substance satisfactory to CITY, carried with an insurance company authorized to transact business in the state of Texas, covering all aspects and risks of loss of all operations in connection with this Agreement, including without limitation, the indemnity obligations set forth herein.

SURVEYOR shall obtain and maintain in full force and effect during the term of this Agreement, and shall cause each approved subcontractor or subconsultant of SURVEYOR to obtain and maintain in full force and effect during the term of this Agreement, commercial general liability, professional liability and automobile liability coverage for non-owned and hired vehicles with insurance carriers admitted to do business in the state of Texas. The insurance companies must carry a Best's Rating of A-VII or better. Except for Professional Liability, the policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Combined Single Limit: \$1,000,000

Professional Liability:

Combined Single Limit: \$1,000,000

Automobile Liability:

Combined Single Limit for any auto: \$1,000,000 Per Occurrence

SURVEYOR shall further cause any approved subcontractor or subconsultant to procure and carry, during the term of this Agreement, Professional Liability coverage, as specified above for SURVEYOR, protecting CITY against direct losses caused by the professional negligence of the approved subcontractor or subconsultant.

The CITY shall be listed as a primary additional insured with respect to the Automobile Liability and Commercial General Liability and shall be granted a waiver of subrogation under those policies. SURVEYOR shall provide a Certificate of Insurance to the CITY as evidence of coverage. The Certificate shall provide 30 days' notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy will be included in the Certificate. The additional insured endorsement shall include Products and Completed Operations.

SURVEYOR shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, SURVEYOR shall maintain said coverage throughout the term of this Agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the SURVEYOR maintains said coverage. The SURVEYOR may maintain Occupational Accident and Disability Insurance in lieu of Worker's Compensation. In either event, the policy must be endorsed to include a waiver of subrogation in favor of the City of Forney.

If at any time during the life of the Agreement or any extension hereof, SURVEYOR fails to maintain the required insurance in full force and effect, SURVEYOR shall be in breach hereof and all work under the Agreement shall be discontinued immediately.

**ARTICLE IX. EMPLOYMENT OF AGENTS/RETAINING
OF CONSULTANTS**

SURVEYOR may employ or retain consultants, contractors, or third parties (any of which are referred to herein as "Subconsultant"), to perform certain duties of SURVEYOR, as set forth on Exhibit "A", attached hereto, under this Contract, provided that CITY approves the retaining of Subconsultants. SURVEYOR is at all times responsible to CITY to perform the Services as provided in this Agreement and SURVEYOR is in no event relieved of any obligation under this Contract upon retainage of any approved Subconsultant. Any agent and/or Subconsultant retained and/or employed by SURVEYOR shall be required to carry, for the protection and benefit of the CITY and SURVEYOR and naming said third-parties as additional insureds, insurance as described above in this Contract.

ARTICLE X. CONFIDENTIALITY

SURVEYOR shall retain all information received from or concerning the CITY and the CITY's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the CITY, unless otherwise required by law.

ARTICLE XI. INDEMNITY

Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and the SURVEYOR's fee for the Services, and in consideration of the promises contained in this Agreement, SURVEYOR agrees to provide the indemnities set forth herein.

SURVEYOR SHALL INDEMNIFY AND HOLD CITY AND CITY'S ELECTED OFFICIALS, OFFICERS, EMPLOYEES AND INDEPENDENT CONTRACTORS HARMLESS, TO THE FULLEST EXTENT PERMITTED BY LAW, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, AND INCLUDING REASONABLE ATTORNEY'S FEES, TO THE EXTENT CAUSED BY OR RESULTING FROM SURVEYOR'S NEGLIGENT ACTS, ERRORS, OR OMISSIONS.

THE INDEMNITY PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

ARTICLE XII. COMPLIANCE WITH APPLICABLE LAWS

SURVEYOR shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this Contract, and any amendments thereto.

ARTICLE XIII. NOTICE

A. General. Whenever notice from SURVEYOR to CITY or CITY to SURVEYOR is required or permitted by this Contract and no other method of notice is provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery); (2) facsimile (in which case such notice shall be effective upon delivery); or (3) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. SURVEYOR's Address. SURVEYOR's address and numbers for the purposes of notice are:

Surdukan Surveying, Inc.
PO BOX 126
Anna, Texas 75409
Telephone: (972) 924-8200

C. City's Address. CITY's address and numbers for the purposes of notice are:

City of Forney
Attn: City Manager
P. O. Box 826
Forney, Texas 75126
Telephone: (972) 564-7300

D. Change of Address. Either party may change its address or numbers for purposes of notice by giving written notice to the other party as provided herein, referring specifically to this Contract, and setting forth such new address or numbers. The address or numbers shall become effective on the 15th day after such notice is effective.

ARTICLE XIV. CITY-PROVIDED DATA

CITY shall furnish SURVEYOR non-confidential studies, reports and other available data in the possession of the CITY pertinent to SURVEYOR's Services, so long as CITY is entitled to rely on such studies, reports and other data for the performance of SURVEYOR's Services under this Contract (the "Provided Data"). SURVEYOR shall be entitled to use and rely, so long as such reliance is reasonable, upon all such Provided Data.

ARTICLE XV. MISCELLANEOUS

A. Captions. The captions for the articles and sections in this Contract are inserted in this Contract strictly for the parties' convenience in identifying the provisions to this Contract and shall not be given any effect in construing this Contract.

B. Audit. SURVEYOR shall provide access to its corporate books and records to the CITY. The CITY may audit, at its expense and during normal business hours, SURVEYOR's books and records with respect to this Contract between SURVEYOR and CITY.

C. Records. SURVEYOR shall maintain records that are necessary to substantiate the services provided by SURVEYOR.

D. Assignability. SURVEYOR may not assign this Contract without the prior written approval of the CITY.

E. Successor and Assigns. This Contract binds and inures to the benefit of the CITY and SURVEYOR, and in the case of CITY, its respective successors, legal representatives, and assigns, and in the case of SURVEYOR, its permitted successors and assigns.

F. Construction and Venue. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN KAUFMAN COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF KAUFMAN, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

G. Severability. If any provision of this Contract is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstances, the remainder of this Contract and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective shall not be affected thereby.

H. Amendment. No amendment, modification, or alteration of the terms of this Contract shall be binding unless such amendment, modification, or alteration is in writing, dated subsequent to this Contract, and duly authorized and executed by SURVEYOR and CITY.

I. Entire Agreement. This Contract, including Exhibits "A," attached hereto, contains the entire Contract between the CITY and SURVEYOR, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

J. No Joint Enterprise. Nothing contained herein shall be construed to imply a joint venture, joint enterprise, partnership or principal-agent relationship between SURVEYOR and the CITY.

K. Documents Owned by CITY. Any and all documents, drawings and specifications prepared by SURVEYOR as part of the Services hereunder, shall become the property of the CITY when SURVEYOR has been compensated as set forth in Article II, above. The SURVEYOR shall make copies of any and all work products for its files.

L. Notice of Waiver. A waiver by either CITY or SURVEYOR of a breach of this Agreement must be in writing to be effective. In the event either party shall execute and deliver such waiver, such waiver shall not affect the waiving party's rights with respect to any other or subsequent breach.

M. Third Party Activities. Nothing in this Agreement shall be construed to provide any rights or benefits whatsoever to any party other than CITY and SURVEYOR.

EXECUTED as of the Effective Date hereof.

CITY OF FORNEY

Anthony Carson, Jr., City Manager Date

SURDUKAN SURVERYING, INC.

David Surdukan Date