



CITY OF FORNEY, TEXAS PROFESSIONAL SERVICES AGREEMENT

ARTICLE 1 RECITALS AND INTENT

1.1 This Agreement ("Agreement") is made by and between the City of Forney, TX ("City") and Fitzpatrick Design Construction Services Group LLC ("Professional"), acting by and through their duly authorized representatives, and is effective on the date stated herein.

1.2 The City has requested professional project management services, and desires to engage Professional to provide these services in connection with the work assigned ("Exhibit A").

1.3 The City desires to engage the services of Professional as an independent contractor, and not as an employee, to perform the assigned Services under the terms and conditions provided in this Agreement, and Professional desires to render professional services for the City on the terms and conditions provided in this Agreement.

1.4 This Agreement and the obligations of the parties are contained in this document and in any Request for Proposals or Qualifications issued by the City, and the Services and details of performance will be described in task orders ("Exhibit B").

ARTICLE 2 CONTRACTUAL RELATIONSHIP

2.1 The City agrees to employ the Professional, and the Professional agrees to perform, as an independent contractor, certain professional services on an as-needed basis pursuant to City-issued task or work orders in accordance with the project described therein.

2.2 This Agreement shall serve as the general agreement for professional services, and each assignment will be defined by a Task Authorization Form, which will define the scope, fee, and schedule for such assignment. Professional may be engaged by the City on a project-by-project basis, at the City's sole option, by task order, and the City's approval of this Agreement shall in no way be interpreted as any guaranty of any work assignment. No Services shall be undertaken or performed by Professional unless and until a written notice to proceed has been issued by the City, following its approval of a task order.

2.3 The Services to be provided under this Agreement are intended to include services within the scope of Professional's licensure or registration and may include plan review, and project management. The Professional shall also perform additional services as may be requested from time to time by the City. The City shall compensate the Professional as provided in task orders.

ARTICLE 3 PROFESSIONAL'S OBLIGATIONS

3.1 Professional's obligations may include but are not limited to the following:

3.1.1 The Professional shall provide to the City the professional services and incidental materials specified in the Services assigned. No Services shall be undertaken or performed by the Professional until a written notice to proceed has been issued by the City.

3.1.2 All Services shall be of superior quality and shall be performed in a professional manner in accordance with industry standards. The minimum standard of care for all professional and related Services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the Professional's profession practicing under similar conditions at the same time and in the same locality. Professional will re-perform any Services not meeting this standard without additional compensation.

3.1.3 Professional shall, promptly following issuance of a task order, submit a Schedule of Work for City's approval, which shall specify the dates and milestones by which the Services covered by the task order will be completed. Professional shall perform the Services in a timely fashion to comply with the City's requirements and in accordance with the approved Schedule of Work.

3.1.4 Professional shall comply with all applicable laws, rules and regulations governing all Services and any projects authorized by this Agreement.

3.2 Opinions of Probable Construction Cost. Any opinions or estimates of probable construction costs to be provided under this Agreement are to be made or reviewed on the basis of the Professional's experience and qualifications and represent the Professional's judgment as an experienced and qualified professional. However, since the Professional has no control over the cost of labor, materials, equipment or services furnished by others or over the contractor's methods of determining prices, or over competitive bidding or market conditions, Professional cannot and does not guarantee that proposals, bids or actual final construction costs will not vary from the opinions or estimates prepared or reviewed by the Professional.

3.3 Services During Construction

3.3.1 Professional's Personnel at Construction Site

a. If included in the Services assigned, Professional shall make visits to the site at intervals appropriate to the various stages of construction, as Professional deems

necessary, in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of the work of the construction contractor (the "Contractor").

b. Additionally, if and to the extent included in the assigned Services, Professional shall provide the services of a Project Representative at the site to assist Professional and to provide on-site observations of such work. The furnishing of such Project Representative services will not extend Professional's responsibilities or authority beyond the specific limits set forth in this Agreement. Such visits and observations by Professional and the Project Representative are not intended to be exhaustive, or to extend to every aspect of the work in progress, or to Professional in this Agreement, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on Professional's exercise of professional judgment as assisted by the Project Representative. Based on information obtained during such visits and such observations, Professional shall endeavor to determine, in general, if such work is proceeding in accordance with the construction contract documents ("Contract Documents"), and Professional shall keep City informed of the progress of the work. The Professional shall report to the City any deficiencies in the work of which the Professional has direct knowledge.

3.3.2 Contractor Responsible for Construction Work. The Professional shall review techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of the Contractor. The Professional shall not guarantee the performance of the Contractor nor be responsible for the acts, errors, omissions or the failure of the Contractor to perform the construction work in accordance with the Contract Documents.

3.3.3 Construction Progress Payments. Recommendations by the Professional to the City for periodic construction progress payments to the Contractor will be based on the Professional's knowledge, information

and belief from selective observation and sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the Professional to ascertain that the Contractor has completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that the Professional has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work materials or equipment has passed to City free and clear of all liens, claims, security interests or encumbrances; or that there are not other matters at issue between City and Contractor that affect the amount that should be paid.

3.3.4 Contractor Submittals. Professional shall review Contractor's shop drawings and other submittals if included in the assigned Services. Such review shall be only for conformance with the information given in the Contract Documents and for compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews will not extend to means, methods, techniques, sequences or procedures of construction, or to safety precautions and programs incident thereto.

3.3.5 Record Drawings. Professional shall coordinate record drawings provided by Contractor. Such record drawings will be based on information furnished by Contractor to Professional showing changes made during construction. The Professional is not responsible for any errors or omissions in the information provided by Contractor that is incorporated into the record drawings.

ARTICLE 4 THE CITY'S RESPONSIBILITIES

4.1 The City shall provide to Professional all its criteria and requirements for any Project and all available information pertinent to the Project including previous reports. Professional may reasonably rely upon such information.

4.2 The City shall arrange for access to and make all provisions for Professional to enter upon public and private property as required for

Professional to perform Services under this Agreement.

4.3 The City will obtain, arrange and pay for all advertisements for bids; all permits and licenses required for the Project; and all land, easements, rights-of-way and access necessary for the Professional's Services under this Agreement or for performance of the Services.

4.4 The City will examine Professional's studies, reports, sketches, drawings, specifications, proposals and other information submitted by Professional, consult with others as City deems appropriate, and render timely written approvals and decisions to the Professional.

4.5 The City shall give prompt written notice to Professional whenever City becomes aware of any development that affects the scope or timing of Professional's Services or of any defect or nonconformance in the Services of the Professional or work of the Contractor.

ARTICLE 5 PROFESSIONAL'S COMPENSATION

5.1 In complete compensation for all the Services, the City shall pay to the Professional the compensation set forth in each task order. The Professional's compensation shall not exceed the sum set forth in the task order, which may be prorated on a daily basis in the event of a termination of this Agreement or a work stoppage ordered by City.

5.2 Invoices for Services performed under a task order will be submitted to City by Professional monthly. Invoices will be due and payable within thirty (30) days after receipt. When appropriate, invoices shall include any changes or updates to the approved Schedule of Work.

5.3 No statement, term or provision in any invoice, bill or statement submitted to City by Professional will be construed to waive, amend or modify any term or provision of this Agreement or any task order.

5.4 The City may make changes within the general assigned Services in a task order. If such changes affect the Professional's cost of or time required for performance of the Services, an equitable adjustment will be made through a written amendment to the task order.

**ARTICLE 6
INDEMNIFICATION**

6.1 With respect to claims brought by third parties against either Professional or the City relating to the property or facilities with respect to which this Agreement pertains, or regarding claims made by Professional against City, Professional and the City agree as follows:

6.1.1 Professional will indemnify, defend and hold harmless the City, its directors, officers, agents and employees against claims, demands or causes of action; and all costs, losses, liabilities, expenses and judgments incurred in connection therewith, including attorneys' fees and court costs, brought by any of Professional's employees or representatives, or by any other third party, based upon, in connection with, resulting from, arising out of, or occasioned by the acts, omissions or conduct of the Professional, its officers, agents, or employees in the execution or performance of this Agreement.

6.1.2 It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the City provide written notice of a third-party claim, demand or cause of action as soon as practical, after written notice of such third-party claim, demand or cause of action is received by the City. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall thereafter have the right to participate in the investigation, defense and resolution of such third-party claim.

6.1.3 Notwithstanding any provision of this article, the City shall in no event be liable or responsible to the Professional or any third party to the extent that the City has immunities or defenses, and nothing in this article or this section or this Agreement shall be deemed in any way as a waiver of any defenses or immunities, whether governmental, sovereign, official, qualified, legislative or otherwise, all such defenses and immunities being hereby expressly retained. Nothing in this Agreement shall be deemed in any way to grant or confer any

right, title or interest in or to any person not a party to this Agreement.

6.2 THERE IS NO LIMITATION OF PROFESSIONAL'S LIABILITY AND NONE WILL BE ACKNOWLEDGED, AGREED TO OR OTHERWISE RECOGNIZED IN CONNECTION WITH THIS AGREEMENT AND ANY AND ALL SERVICES PROVIDED BY PROFESSIONAL.

**ARTICLE 7
INSURANCE**

7.1 The Professional shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.

7.2 The Professional shall, upon request by the City, furnish certificates of insurance to the City evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of the Professional, name of insurance company, policy number, term of coverage and limits of coverage. The Professional shall cause its insurance companies to provide the City with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. The Professional shall obtain such insurance from such companies having a Best rating of B+/VII or better, licensed or approved to transact business in the state in which the Services shall be performed, and shall obtain such insurance of the following types and minimum limits:

a. Workers Compensation insurance shall be provided by Professional for Professional's employees engaged in City projects in at least the statutory minimums.

b. Commercial General Liability insurance with limits of not less than:

\$2,000,000 general aggregate limit
\$2,000,000 each occurrence, combined single limit

c. Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

7.3 The minimum limits may be increased by the City based on project-specific needs, or specific coverages may be waived by express provision in task orders. The City and the City's agents and employees shall be added as additional insureds to all coverage required above, except for Workers Compensation and automobile liability insurance. All policies written on behalf of the Professional shall contain a waiver of subrogation in favor of the City and the City's agents and employees.

ARTICLE 8 DURATION, EXTENSION AND TERMINATION

8.1 This agreement shall be for a term of two (2) years and, if not terminated by City, shall automatically renew for additional terms of one (1) year. Time is of the essence in the performance of this Agreement.

8.2 This agreement may be terminated by either party for convenience upon thirty (30) days written notice or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) business days of written notice and diligently complete the correction thereafter. Upon delivery of such notice, the Professional shall, unless the notice states otherwise, immediately discontinue all Services, proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Services, and deliver to the City all instruments of service produced under this Agreement. Upon termination, the City will owe the Professional for all compensation earned under this Agreement to date of termination, without termination expenses.

ARTICLE 9 OWNERSHIP OF DOCUMENTS

9.1 All documents including but not limited to reports, drawings and specifications, provided or furnished by Professional pursuant to this Agreement are instruments of service in respect to the Project, whether or not the Project is completed, and shall be the property of the City. The City shall have, keep and retain all rights, title and interest in and to all Instruments of Service, including all ownership, common law, statutory, and other reserved rights, including copyrights, in and to all Instruments of Service, whether in draft

form or final form, which are produced at its request and in furtherance of this Agreement. The Professional shall endeavor to omit any information in the Instruments of Service which may constitute trade secrets. If any portion of the documents comprising the Instruments of Service have been previously copyrighted or otherwise protected from disclosure or unauthorized use by the Professional which have previously been prepared by the Professional and which are not created for the sole and specific purpose of this Project, such copyright protections or reservations of rights shall be expressly stated thereon.

9.2 When such documents are in electronic form, the City shall own copies of data files, text, specifications or drawings for the City's information in its use of the Services. However, due to the potential that electronic information can be modified by the City or other persons, unintentionally or otherwise, Professional reserves the right to remove all indicia of its ownership and/or involvement from each electronic display or file. For documentation purposes, the original computer files will be retained by Professional for a period not to exceed five (5) years after completion of the Services. Thereafter, all such files shall be remitted to the City.

9.3 In addition, electronic information created and produced by Professional is considered a part of Professional's instrument of service and will not be used by the City on other Services, for additions to this Service, or for completion of this Service by another design professional except by agreement or Professional's default.

9.4 Any such use or reuse of any instrument of service by the City or others without written verification or data adaptation by Professional for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Professional.

ARTICLE 10 LIMITATIONS ON RIGHTS AND REMEDIES

10.1 Professional and City agree that neither of them shall be responsible or liable to the other for the consequences of events that are beyond the reasonable control of the other party including, but not limited to, interference by third parties,

changed conditions, labor strikes, fires, thefts or other losses, or acts of God.

10.2 If no environmental assessments are included within the scope of work, the Professional shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, except prompt notice to Owner upon discovery.

ARTICLE 11 NO THIRD-PARTY RIGHTS

11.1 Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either City or Professional.

11.2 The Services to be performed by the Professional under this Agreement are solely for the benefit of the City. This Agreement shall not be construed as creating any contractual relationship of any kind between the Professional and any third party. It is the intent of the parties that there are no third-party beneficiaries to this Agreement. The fact that the City may enter into other agreements with third parties that provide the Professional the authority to observe the work being performed by the third party shall not give rise to any duty or responsibility on the part of the Professional in favor of such third party.

ARTICLE 12 MISCELLANEOUS

12.1 This Agreement shall be effective upon its execution by the Professional and the City, subject to the notice to proceed, and shall remain in full force until all obligations under this Agreement have been fulfilled, unless sooner terminated as provided herein.

12.2 This Agreement shall be construed and enforced for all purposes pursuant to the laws of the State of Texas. Venue shall be exclusively in the state courts of proper jurisdiction of Collin County, Texas.

12.3 This Agreement is non-assignable. Neither the Professional nor the City shall assign, sublet

or transfer its interest in this Agreement without the prior written consent of the other.

12.4 This Agreement, which expressly incorporates and includes the City's Request for Proposals or Qualifications, represents the entire agreement between the Professional and the City with respect to the subject matter hereof and supersedes and merges all prior negotiations, representations, discussions or agreements, either written or oral, with respect to the subject matter hereof.

12.5 No statement, term or provision in any proposal, response to any Request for Proposal or Qualifications, Statement of Qualifications, general conditions, invoice, bill or statement submitted by Professional to City will be construed to waive, amend or modify any term or provision of this Agreement.

12.6 This Agreement may be amended only by written instrument signed by duly authorized representatives of both the Professional and the City. The City's payment of invoices or statements shall not be deemed as the City's acceptance of any term or provision that amends or modifies this Agreement or the task order under which payment is made.

12.7 No consent or waiver, express or implied, by either party to this Agreement, to or of any breach of default by the other in the performance of any obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of any party to this Agreement to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

12.8 If a provision of this Agreement, or the application thereof to any person or circumstances, is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this

Agreement in the event any provision hereof is declared illegal, invalid or unenforceable.

If to City: City of Forney Texas
P.O. Box 826
Forney, Texas 75126
Attn: City Manager

12.9 All notices required or permitted hereunder shall be in writing and shall be deemed delivered three (3) days after deposit with the United States Postal Service, certified mail, return receipt requested, addressed to the respective other party at the addresses shown below:

12.10 The headings and captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

If to Professional: Fitzpatrick Design Construction Services Group, LLC
P.O. Box 864784
Plano, TX 75086-3052

12.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth.

CITY OF FORNEY, TEXAS

By: _____
Charles W. Daniels, City Manager Date

FITZPATRICK DESIGN CONSTRUCTION SERVICES GROUP, LLC

By: _____
_____, Its _____
Jerry Fitzpatrick, Managing Member

ATTEST:

Dorothy Brooks, City Secretary

APPROVED AS TO FORM:

Jennifer Smith, Assistant City Attorney



TASK AUTHORIZATION #FY

Client: City of Forney, Texas P.O. Box 826 Forney, TX 75126 Attn: City Manager	City Project No.: Consultant Project No: Date:																																																		
Project Description:																																																			
Description of services: Professional Project Management Services for [insert description] See Attachment A Deliverables: See Attachment A																																																			
Compensation shall be as follows: Basic Services – (Lump Sum) Special Services – (T&M NTE)																																																			
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr style="background-color: #ffff00;"> <th style="width: 10%;">Task</th> <th style="width: 50%;">Description</th> <th style="width: 15%;">Quantity</th> <th style="width: 15%;">Unit Price</th> <th style="width: 10%;">Total</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Professional Project Management Services</td> <td></td> <td></td> <td></td> </tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr style="background-color: #ffff00;"> <td colspan="2"></td> <td>Total Not to Exceed</td> <td></td> <td></td> </tr> </tbody> </table>		Task	Description	Quantity	Unit Price	Total	1	Professional Project Management Services																																									Total Not to Exceed		
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1	Professional Project Management Services																																																		
		Total Not to Exceed																																																	
	Total Contracted Fee																																																		
Schedule shall be as follows: Provide services per Exhibit A for a duration of (xx) months. If additional services are requested, or project duration extends past (xx) months, FDCS will bill per hourly rate \$185.00.																																																			

The above described services shall proceed upon return of this Task Authorization. Services will be billed monthly, as they are completed. All other provisions, terms, and conditions of the agreement for services which are not expressly amended shall remain in full force and effect.

X This Task Authorization will serve as the notice to proceed.

CONSULTANT: FDCS

CITY OF FORNEY TEXAS:

BY: _____
 TITLE: Managing Member
 DATE: _____

BY: _____
 TITLE: City Manager
 DATE: _____



HOURLY BILLING RATES

Project Principal.....	\$210.00
Project Manager	\$185.00
Assistant Project Manager.....	\$145.00
Clerical	\$85.00

PROJECT FEE SCHEDULE

0-\$2,000,000.00	Flat Fee \$5K Per Month
\$2,000,000.00 – \$3,000,000.00	3.8%
\$3,000,000.00 - \$5,000,000.00	3.7%
\$5,000,000.00 - \$6,500,000.00	3.5%
\$6,500,000.00 - \$7,500,000.00	3%
\$7,500,000.00 - \$8,500,000.00	2.8%
\$8,500,000.00 - \$10,000,000.00	2.6%

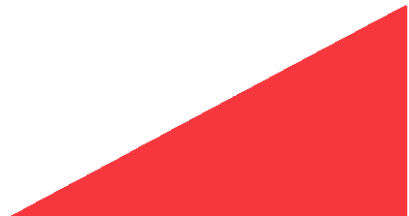


FITZPATRICK
DESIGN CONSTRUCTION SERVICES



CONSTRUCTION **MANAGEMENT**

From initial planning to project oversight and completion, FDCS offers a full range of independent architectural, budgetary, scheduling, safety, and construction management expertise to municipal clients.





ABOUT FDCS

FDCS is a professional services firm of key industry experts with over seventy combined years of expertise that provides third-party construction management services to municipal clients in the North Texas area.

FDCS offers a full spectrum of skills and specialties from vetted teams of architects and general contractors. Our purpose is to help our clients fulfill their vision of the future and the planned growth of their communities.



A TRUSTED **PARTNER**

Since some municipalities don't have a construction department to oversee community projects, we take a project from planning to completion so that the municipal staff can focus on their own jobs instead of the meticulous oversight required of any construction project.



EXPERIENCED **PROFESSIONALS**

FDCS has gathered a unique coalition of experienced professionals in all architectural and construction disciplines that stands ready to assist with any vision our clients have or any issue that might arise.



EFFECTIVE **COMMUNICATION**

Our goal is to bring order and reliability to the construction process by articulating our clients' needs to the project team so they can avoid costly errors and delays.



PROVIDING PEACE OF MIND

SERVICES

FDCS' services to municipalities are rooted in our core values – servant leadership, professionalism, responsibility, and integrity.

- Construction / Project Management
- 3rd Party Representation
- Site Evaluation/Selection
- Contract Management
- Feasibility Studies
- Cost Estimating /Bid analysis
- Project Scheduling
- Cost Management / Value Engineering
- Inspection Coordination Services
- Procurement services utilizing Texas Government Code requirements

TESTIMONIALS

FDCS is by far one of the best construction managers with whom I have ever worked. They are honest, loyal, diligent, detailed, and always have our best interest at hand.

Neil Howard, Fire Chief
Rowlett Fire Department

FDCS was very proactive in coordinating between EIKON, the contractor, and the various city departments to ensure the city council presentation was delivered on time and the project remained within budget.

Brad Isbell, P.E., President
EIKON Consulting Group



MEET **JERRY FITZPATRICK**

Jerry Fitzpatrick is a project manager and LEED AP (Leadership in Energy and Environmental Design Accredited Professional) with over three decades of experience in sustainable architectural design, interior design, space planning and construction management. As the founder and principal of Fitzpatrick Design Construction Services (FDCS,) Jerry's mission is to bring servant leadership, transparency, and integrity to outsourced construction management services geared for municipal clients.

Jerry's personal expertise includes interior architectural design, construction management, scheduling, budget management and methods/means analysis. He's a detail-oriented perfectionist and takes pleasure in providing the highest quality results whether FDCS is building a church in Forney or a Fire Station in Rowlett.

 972.757.5354

 jerry@fdcstx.com

 fdcstx.com

 [linkedin.com/company/fdcstx](https://www.linkedin.com/company/fdcstx)

