



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		12/7/10		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
Approval of an Engineering Services Agreement by and between the City of Plano and BW2 Engineers, Inc. in the amount of \$57,275 for the design of the Bluebonnet Trail connection under U.S. 75 at Rowlett Creek and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2010-11	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		580,823	1,150,177	0
Encumbered/Expended Amount		-580,823	-319,094	0
This Item		0	-57,275	0
BALANCE		0	773,808	0
FUND(S): PARK IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2010-11 Park Improvement CIP. This item, in the amount of \$57,275, will leave a current year balance of \$773,808 for the Trail Connections project. STRATEGIC PLAN GOAL: Engineering design services for trail connections relate to the City's Goal of Great Neighborhoods -1st Choice to Live.				
SUMMARY OF ITEM				
<p>This agreement provides for Engineering Services to prepare plans and construction documents for the Bluebonnet Trail connection under U.S. 75 at Rowlett Creek to the City of Allen. This trail is identified on the Six Cities Trail Plan. The trail will connect the existing trail in Plano on Chase Oaks Boulevard with existing trail in Allen located on the north side of Rowlett Creek. This will facilitate a future connection to Oak Point Park and Nature Preserve.</p> <p>The basic services fee of \$41,550 is 9.94% of the estimated construction budget of \$418,000. Additional services in the amount of \$15,725 include hydraulic analysis, permitting, preparation of easement documents and geotechnical services. These fees are consistent with other engineering projects of similar scope.</p> <p>BW2 Engineers, Inc. is on the 2010-11 list of selected consultants for Engineering Services.</p>				



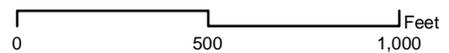
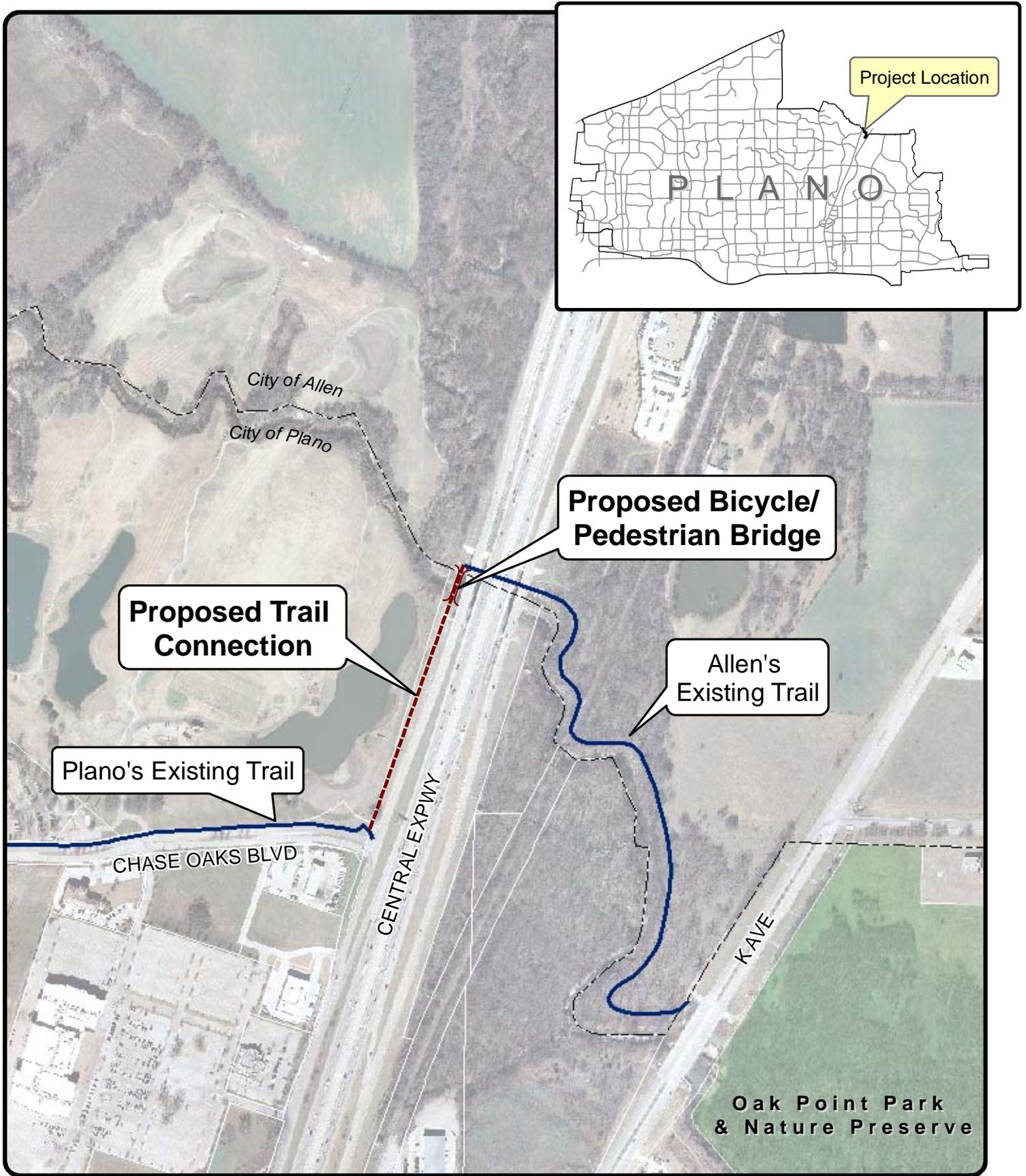
**CITY OF PLANO
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List of Supporting Documents: Location Map Agreement	Other Departments, Boards, Commissions or Agencies



Location Map

Trail Connection at Rowlett Creek



CHASE OAKS TRAIL CONNECTOR (AT ROWLETT CREEK)

PROJECT NO. 6109

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BW2 ENGINEERS, INC.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **CHASE OAKS TRAIL CONNECTOR (AT ROWLETT CREEK)** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works & Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

BW2 Engineers, Inc.
1919 South Shiloh Road, Suite 500, LB 27
Garland, TX 75042
Attn: Jim Waldbauer

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

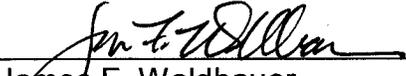
G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

BW2 ENGINEERS, INC.
A Texas Corporation

DATE: 11/9/10

BY: 
James F. Waldbauer
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

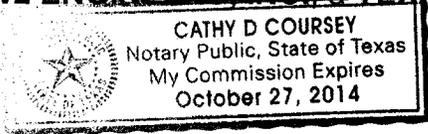
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 9th day of November, 2010, by **JAMES F. WALDBAUER, VICE PRESIDENT**, of **BW2 ENGINEERS, INC., a TEXAS** corporation, on behalf of said corporation.



Cathy D. Coursey
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **THOMAS H. MUEHLENBECK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT A
SCOPE OF SERVICES
CHASE OAKS TRAIL CONNECTOR PROJECT
(AT ROWLETT CREEK)

BASIC SERVICES

A. Pre-Design

1. Meet with City of Plano and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.
3. After completion of design survey, review existing conditions and prepare a schematic design of proposed improvements. Schematic design will be reviewed with City Staff and modified as needed for use as the proposed improvements.

B. Design Survey

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners, property lines and corners, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing utility structures shall be located horizontally and referenced by utility name (i.e. T.U. Elec., Verizon Telephone, Atmos Gas, Etc.).
4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. When underground utilities are exposed, tie to project control baseline.
6. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

C. Plans, Specifications and Estimate

1. Prepare construction plans for the trail and pedestrian bridge. Prepare the following sheets at the appropriate engineering scale:
 - Cover sheet.
 - Project layout control sheet(s).
 - Summary of Quantities sheet.
 - Typical sections and construction detail sheets.
 - Erosion control plans.
 - Trail plan & profile sheets.
 - Pedestrian bridge sheets including structural design.
 - Traffic Control Plans.
 - Drainage/Channel Sheets (if required).

- SWPPP sheets meeting EPA and City of Plano requirements, if required.

Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.

2. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
3. Meet with City of Plano staff to discuss City comments on construction plans, specifications and cost estimates.
4. Revise and finalize preliminary plans incorporating comments from the City of Plano. Also meet and coordinate plans with the City of Allen, as directed by the City of Plano.
5. Incorporate comments from the utility companies.
6. Finalize special technical specifications and special conditions (if any).
7. Incorporate standard details into the construction plans and prepare additional details as required.

D. Bid Phase Services and Meetings

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Prepare and distribute addenda to bid documents as necessary.
4. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
5. Submit a CD-ROM disk of the bid set plans in a PDF format.
6. Provide bid tabulation to the City of Plano.
7. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
8. Furnish ten sets of full size and three sets of half size final construction plans and one set of the contract documents manual to the City for construction.

E. Meetings

BW2 Engineers, Inc. will attend a pre-bid conference and a pre-construction meeting at the City of Plano, if requested.

SPECIAL SERVICES

F. Hydraulic Analyses and Permitting

The Engineer will complete the following services in relation to hydraulic analyses and permitting for the proposed pedestrian bridge.

1. Engineer will secure the existing hydraulic models for Rowlett Creek within the project area. The existing HEC-2 model and floodway model will be updated based on newly obtained topographic information. If possible, the models will be converted to HEC-RAS format. The models will be reviewed to determine resulting water surface elevations, velocities and floodway location. This updated information will serve as the existing condition model for hydraulic design calculations.

The existing condition model will then be modified for the proposed trail and pedestrian bridge crossing. The initial model for proposed conditions will be based on the preliminary design plans prepared by BW2. The proposed improvements will be incorporated into the hydraulic model and resulting impacts will be determined. This will include impacts to:

1. Water surface elevations.
2. Channel and overbank velocities.
3. Valley storage within the floodplain.

Based on the results of the initial analysis, BW2 will modify the proposed condition model, as necessary. These adjustments may include relocation and/or resizing of the proposed pedestrian bridge and related appurtenances in order to minimize effects to the water surface elevations, velocities, and/or valley storage.

2. The hydraulic results and design evaluations will be summarized in a technical hydraulic report. The report will tabulate baseline conditions with respect to flood elevations, channel velocities, stream conveyance properties, and valley storage within the project area. The impacts of the proposed improvements will also be documented.

The report will also outline any necessary regulatory permits that may be required to implement the proposed improvements. Engineer will provide two (2) copies of the report for review and comment, and appropriate revisions will be made.

3. Rowlett Creek has been included in the National Flood Insurance Program as a detailed study area. A submittal to FEMA is included for a Conditional Letter of Map Revision (CLOMR). The CLOMR submittal will be prepared after the acceptance of any revisions to the aforementioned report. Engineer shall prepare the necessary documents for the CLOMR submittal and shall provide the coordination with FEMA during their review. A draft of the CLOMR submittal shall be provided to the City of Plano for review and comment. BW2 shall make appropriate revisions to the submittal to receive acceptance from FEMA.
4. Following the completion of the construction, a final LOMR will be submitted to revise the FIS maps. The LOMR submittal will be based on record drawings, with the assistance of the contractor in preparation of record drawings, and limited field survey by BW2 for verification. BW2 shall prepare the necessary documents for the LOMR submittal and shall provide the coordination with FEMA during their review.

It is assumed that no Section 404 Permit will be required as it is the intent to span the entire creek with the proposed pedestrian bridge.

G. Right-of-Way and/or Easement Document Services

BW2 will perform the services required to create easement documents for two (2) parcels in relation to the subject project. The proposed trail and pedestrian bridge alignment, in conjunction with other data, will be utilized in determining the limits of easements required. The easement documents will include a certified plat map and a certified description for each parcel created to the standards of the *Manual of Practice for Land Surveying in the State of Texas*. The datum for this survey will be the Texas State Plane Coordinate System, North Central Zone.

H. Geotechnical Services

BW2 will retain the services of a geotechnical engineering firm to perform necessary soils investigations and provide recommendations for use during the design of the pedestrian bridge structural elements. This will include exploring subsurface soil conditions, obtaining physical soil properties by laboratory testing and providing recommendations for use during design of the pedestrian bridge. In general, the field investigation will consist of two (2) soil borings, one on each side of the main channel of Rowlett Creek (outside the top of bank) to a depth of 50' below grade or 10' into gray limestone, whichever is shallower.

ADDITIONAL SERVICES

The following items are excluded from this agreement, however, BW2 Engineers, Inc. can provide these services under separate agreement on an hourly basis and/or agreed upon fee:

- **Construction Administration Services**

EXHIBIT B
SCHEDULE OF WORK
CHASE OAKS TRAIL CONNECTOR PROJECT
(AT ROWLETT CREEK)

SCHEDULE

Plans and specifications will be submitted according to the following schedule for completion, for review by the City prior to submittal of final documents. These will be submitted to the City of Plano Trail System Planner.

Percentage of Completion	Date of Submittal
Schematic Plans/Design Survey	6 weeks
50% Plans and Estimate	8 weeks
90% Plans w/Specifications and Estimate	8 weeks
100% Plans, Specifications and Estimate	4 weeks

Note that the above schedule is for BW2 Engineers, Inc. work effort only and does not include time required for review, other subconsultant services (geotech), and approval by the City of Plano and/or other regulatory agencies.

EXHIBIT C
COMPENSATION AND METHOD OF PAYMENT
AND
OPINION OF PROBABLE CONSTRUCTION COST
CHASE OAKS TRAIL CONNECTOR PROJECT
(AT ROWLETT CREEK)

To assist in evaluating the appropriate compensation for the project, BW2 Engineers, Inc. has prepared an Opinion of Probable Construction Cost for the project. A copy of this estimate is provided in this section. The Opinion of Probable Construction Cost for the project is \$413,206.50. BW2 Engineers, Inc. provides the following fees for the scope of services as outlined in Attachment A, defined herein.

Fees

Basic Services <i>(Includes Design Surveying, Bid Phase Services, Meetings)</i>	\$ 40,800.00
Special Services <i>(Includes Hydraulic Analyses, Permitting, Easement Documents, and Geotechnical Services)</i>	\$ 15,725.00
Reimbursable Expenses	\$ <u>750.00</u>
Total Fixed Fee:	\$ 57,275.00

Basis for Compensation

BW2 Engineers, Inc. will perform the services outlined herein for a lump sum fee of \$57,275.00. Upon the execution of this agreement approval, BW2 will begin work on the tasks outlined herein.

Reimbursable expenses are those incurred by BW2 Engineers, Inc. which are not included in our Basic Services and Special Services fees. These costs will be invoiced separately at a cost of 1.1 times the actual expense incurred unless otherwise specified. We propose a budget of \$750 for these expenses. This budget will not be exceeded by BW2 Engineers, Inc. without the formal approval of the City of Plano. These costs include:

1. Printing of plan and specification sets in addition to bid sets specified (e.g., interim review sets (quantity undetermined), etc.)
2. Long-distance communication charges
3. Courier or delivery service
4. Postage
5. Travel outside of the metroplex

EXHIBIT "D"
ENGINEERING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

- | | |
|---|--|
| <input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas
\$100,000 accident \$100,000 disease
\$500,000 policy limit disease |
| <input type="checkbox"/> 2. For Future Use | |
| <input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program | 150,000 medical, safety program |
| <input checked="" type="checkbox"/> 4. General Liability | Complete entry No. 26
Minimum 500,000 each
1,000,000 |
| <input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL) | |
| <input checked="" type="checkbox"/> 6. Premises/Operations | (Items No. 3-10 & 12 require) |
| <input checked="" type="checkbox"/> 7. Independent Contractors | \$500,000 combined single limit
for bodily injury and property damage |
| <input type="checkbox"/> 8. Products | damage each occurrence with |
| <input type="checkbox"/> 9. Completed Operations | \$1,000,000 general aggregate that
applies to project under contract |
| <input checked="" type="checkbox"/> 10. Contractual Liability | |
| <input checked="" type="checkbox"/> 11. Personal Injury Liability | \$500,000 each offense & aggregate |
| <input type="checkbox"/> 12. XCU Coverages | |
| <input checked="" type="checkbox"/> 13. Automobile Liability | \$500,000 Bodily Injury & Property |
| <input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned | Damage each accident |
| <input type="checkbox"/> 15. Motor Carrier Act Endorsement | |
| <input checked="" type="checkbox"/> 16. Professional Liability | \$1,000,000 each claim
\$2,000,000 aggregate |
| <input type="checkbox"/> 17. Garage Liability | \$ _____ BI & PD each occurrence |

18. Garagekeepers' Legal \$ _____ - Comprehensive
\$ _____ - Collision
19. Owners Protective Liability \$500,000 Combined single limits
20. City named as additional insured on General Liability policy. This coverage is primary to all other coverages the City may possess.
21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.
22. Ten (10) days notice of cancellation, ~~non-renewal, endorsement required~~. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).
24. The Certificate must state project title and project number.
25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

I have reviewed these requirements with the named below. Additionally:

26. The above policy(s) carry the following deductibles: **Professional Liability - \$5,000. Deductible**

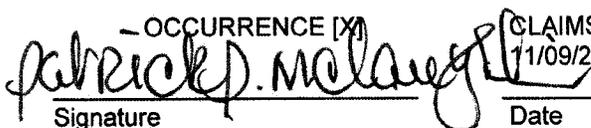
Full limits of coverage available for:

General Liability To the Best of our Knowledge Professional Liability To the best of our knowledge

Automobile Liability To the best of our knowledge

27. Liability policies are (indicate):

- OCCURRENCE [X] CLAIMS MADE [X] - PROFESSIONAL LIABILITY
11/09/2010

 _____
Signature Date

PATRICK P. MCLAUGHLIN / MCLAUGHLIN BRUNSON INSURANCE AGENCY, LLP

Insurance Agent (Print)

BW2 Engineers, Inc.

11/09/2010

Date

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of BW2 Engineers, Inc., and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of BW2 Engineers, Inc., is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

BW2 ENGINEERS, INC.

Name of Contractor

By:

James F. Waidebauer
Signature

JAMES F. WAIDBAUER

Print Name

VICE PRESIDENT

Title

11/9/10

Date

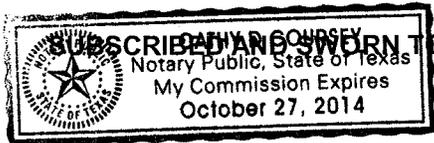
STATE OF TEXAS

§

COUNTY OF DALLAS

§

§



Subscribed and sworn to before me this 9th day of November, 2010.

Cathy D. Coursey
Notary Public, State of Texas

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.