

PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS

COUNTY OF NUECES

THIS CONTRACT FOR ENGINEERING SERVICES is made by and between the County of Nueces, hereinafter called "County" and Naismith Engineering, Inc. hereinafter called "Engineer" for the purpose of contracting for engineering services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act" provides for the procurement of professional services of engineers; and

WHEREAS, the County desires to contract for engineering services described as follows:

Hazel Bazemore Park Ecological Enhancements Phase II

NOW, THEREFORE, the County and the Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows:

AGREEMENT

**ARTICLE 1
SCOPE OF SERVICES TO BE PROVIDED BY COUNTY**

The County will furnish items and perform those services for fulfillment of the contract as identified in Attachment A – Services To Be Provided By The County, attached hereto and made a part thereof this contract.

ARTICLE 2
SCOPE OF SERVICES TO BE PROVIDED BY ENGINEER

The Engineer shall perform those engineering services for the fulfillment of the contract as identified in Attachment B – Services To Be Provided By The Engineer, attached hereto and made a part thereof this contract.

The Engineer shall prepare a schedule of work, identified as Attachment C – Work Schedule, attached hereto and made a part thereof this contract. Attachment D – Fee Schedule shall identify the hourly rates for each job title, total number of hours for each job title, and the maximum dollar amount payable for each job title.

ARTICLE 3
CONTRACT PERIOD

After execution of this contract, the Engineer shall not proceed with the work until authorized in writing by the County to proceed, as provided in Article 5 – Work Authorizations. This contract shall terminate at the close of business on March 31, 2015, unless extended by supplement agreement duly executed by the Engineer and the County prior to the date of termination, as provided in Article 10 – Supplemental Agreements, or otherwise terminated, as provided in Article 18 – Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement.

ARTICLE 4
COMPENSATION AND METHOD OF PAYMENT

The maximum amount payable under this contract is \$8,500.00 unless modified as provided in Article 10 – Supplemental Agreements.

All payments will be made in accordance with the hourly rates for each job title established in Attachment D – Fee Schedule.

The Engineer shall prepare and submit to the County, no more frequently than once per month, an invoice and a progress report stating the percent completion of the work accomplished during the billing period. The invoice and progress report shall contain sufficient detail such that the billing can be reviewed for compliance with both the work schedule and fee schedule.

The County reserves the right to withhold payment pending verification of satisfactory work.

The County assumes no liability for work performed or costs incurred prior to the date authorized by the County to begin work, during periods when work is suspended, or subsequent to the contract completion date.

ARTICLE 5 WORK AUTHORIZATIONS

The County will issue work authorizations, in the form identified and attached hereto as Attachment E – Work Authorization, to authorize the Engineer to perform one or more tasks. The amount payable for a work authorization shall be supported by the estimated cost of each work task as described in the work authorization. The work authorization will not waive the County’s or Engineer’s responsibilities and obligations established in this contract. The work authorization will be issued by the Nueces County Director of Inland Parks. The executed work authorization(s) shall become a part of this contract.

Upon satisfactory completion of the work authorization, the Engineer shall submit to the County for review and acceptance the deliverables as specified in the executed work authorization.

Work included in a work authorization shall not begin until the County and the Engineer have signed the work authorization. All work must be completed on or before the completion date specified in the work authorization. The Engineer shall promptly notify the County of any event which will affect completion of the work authorization.

ARTICLE 6 PROGRESS

The Engineer shall, from time to time during the progress of the work, confer with the County. The Engineer shall prepare and present such information as may be pertinent and necessary, or as may be requested by the County, in order to evaluate features of the work. Upon request by the County, the Engineer shall make presentations to the Commissioners Court.

At the request of the County or the Engineer, conferences shall be held at the Engineer’s office, the County’s office, or at other locations designated by the County. These conferences shall also include an evaluation of the Engineer’s services and work when requested by the County.

Should the County determine that the progress in production of the work does not satisfy the work schedule, the County will review the work schedule with the Engineer to determine corrective action needed.

The Engineer shall promptly advise the County in writing of events which have a significant impact upon the progress of work, including:

- (1) problems, delays, or adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by a statement of the action taken, or contemplated, and any County assistance needed to resolve the situation; and

- (2) favorable developments or events which would enable meeting the work schedule goals sooner than anticipated.

ARTICLE 7 SUSPENSION

The County may suspend the work, but not terminate the contract, by giving written notice a minimum of thirty (30) calendar days prior to the date of suspension. The thirty (30) day notice may be waived if approved in writing by both parties.

The work will be reinstated and resumed in full force and effect within sixty (60) calendar days of receipt of written notice from the County to resume the work. The sixty (60) day notice may be waived if approved in writing by both parties.

If the County suspends the work, the contract period, as determined in Article 3 – Contract Period, is not affected and the contract will terminate on the date specified unless the contract is amended as provided in Article 10 – Supplemental Agreements.

ARTICLE 8 ADDITIONAL WORK

If the Engineer determines that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify the County in writing. In the event the County determines that such work constitutes extra work and exceeds the maximum amount payable, the County shall so advise the Engineer and a supplemental agreement may be executed, as provided in Article 10 – Supplemental Agreements.

The Engineer shall not perform any additional work or incur any additional costs prior to the execution, by both parties, of a supplemental agreement. The County shall not be responsible for actions by the Engineer or any costs incurred by the Engineer relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

ARTICLE 9 CHANGES IN WORK

If the County finds it necessary to request changes to previously satisfactorily completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Engineer shall make such revisions if requested and as directed by the County. This will be considered additional work and paid for as specified under Article 8 – Additional Work.

The Engineer shall make such revisions to the work to correct errors appearing therein, when required to do so by the County. No additional compensation will be paid for the correction of errors.

ARTICLE 10 SUPPLEMENTAL AGREEMENTS

The terms of this contract may be modified by supplemental agreement if the County determines that there has been a significant change in the scope, complexity, or character of the service to be performed, or the duration of the work. Additional compensation, if appropriate, shall be identified as provided in Article 4 – Compensation and Method of Payment.

Any supplement agreement must be executed by both parties within the contract period specified in Article 3 – Contract Period.

No claim for extra work done or materials furnished shall be made by the Engineer until full execution of the supplemental agreement and authorization to proceed is issued by the County. The County reserves the right to withhold payment pending verification of satisfactory work performed.

ARTICLE 11 PUBLIC INFORMATION ACT

All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the exclusive property of the County and shall be furnished to the County upon request. All documents prepared by the Engineer and all documents furnished to the Engineer by the County shall be delivered to the County upon completion or termination of this contract. The Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished the County under this contract. Release of information will be in accordance with the Texas Public Information Act.

ARTICLE 12 PERSONNEL, EQUIPMENT AND MATERIAL

The Engineer shall furnish and maintain, at its own expense, office space for the performance of all services, and adequate and sufficient personnel and equipment to perform the services as required. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them.

The County may instruct the Engineer to remove any employee from association with the work authorized in this contract if, in the sole opinion of the County, the work of the employee does not comply with the terms of this contract or if the conduct of the employee is detrimental to the work.

The Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract. The Engineer may not change the project manager without prior consent of the County.

ARTICLE 13 SUBCONTRACTING

The Engineer shall not assign, subcontract or transfer any portion of the work under this contract without prior written approval of the County. All subcontracts shall include the provisions required in this contract and shall be approved as to form, in writing, by the County prior to work being performed under the subcontract.

ARTICLE 14 EVALUATION OF WORK

The County and its authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If a review or evaluation is being made on the premises of the Engineer or a subcontractor, the Engineer shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the County representatives in the performance of their duties. If funds by other agencies or entities are to be used for payment of the services under this contract or for any construction project as a consequence of this contract, the Engineer's services and work may be subject to periodic review and approval by other agencies or entities, including city, county, state, and/or federal agencies.

ARTICLE 15 SUBMISSION OF REPORTS

All applicable study reports shall be submitted in preliminary form for review by the County before a final report is issued. The County's comments on the Engineer's preliminary report shall be addressed in the final report.

ARTICLE 16 SUBMISSION OF PLANS AND SPECIFICATIONS

Unless otherwise directed, preliminary plans and any supporting documentation submitted for review shall be in triplicate.

The submission of plans and specifications for letting shall consist of two, original paper copies of all documents, along with a compact disc (CD).

Plan Sheet size shall be 24" X 36", unless otherwise directed.

ARTICLE 17
COMPUTER DOCUMENTS AND INFORMATION EXCHANGE

All computer files must be compatible with the County's computer systems without conversion or modifications and must plot consistent with any reproducible plots submitted.

All plots and graphics media provided by the Engineer shall be delivered to the County. Final payment for the work associated with this contract will not be made until the files furnished by the Engineer have been demonstrated to be usable in the required formats.

ARTICLE 18
VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT

Violation of the contract terms or breach of contract by the Engineer shall be grounds for termination of the contract and any increased cost arising from the Engineer's default, breach of contract, or violation of contract terms shall be paid by the Engineer. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 19
TERMINATION

This contract shall terminate at the close of business on March 31, 2015, unless extended as provided in Article 10 – Supplemental Agreements.

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing, of both parties;
2. By the County, by notice in writing to the Engineer as a consequence of failure by the Engineer to perform the services set forth herein in a satisfactory manner;
3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein;
4. By the County, for reasons of its own and not subject to the mutual consent of the Engineer upon not less than thirty (30) calendar days written notice to the Engineer; and

5. By written notice from the County upon satisfactory completion of all services and obligations described herein.

Should the County terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer. In determining the value of the work performed by the Engineer prior to termination the County shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the County terminate this contract under Item 4 of the above paragraph, the amount charged during the thirty (30) calendar day notice period shall not exceed the amount charged during the preceding thirty (30) calendar days.

If the Engineer defaults in the performance of this contract or if the County terminates this contract for fault on the part of the Engineer, the County will give consideration to the actual costs incurred by the Engineer in performing the work to the date of default, the amount of work which was satisfactorily completed to the date of default, the value of the work which is usable to the County, the cost to the County of employing another firm to complete the work required and the time required to do so, and other factors which affect the value to the County of the work performed at the time of default.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the County and the Engineer under this contract except the obligations set forth in Articles 11, 14, 19, 20, 21 and 23 of this contract. If the termination of this contract is due to the failure of the Engineer to fulfill its contract obligations, the County may take over the project and prosecute the work to completion. In such case, the Engineer shall be liable to the County for any additional cost occasioned to the County.

ARTICLE 20 COMPLIANCE WITH LAWS

The Engineer shall comply with all applicable Federal, State, and local laws, statutes codes, ordinances, rules, and regulations, and the orders and decrees of any court, or administrative bodies or tribunals, in any manner affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum salary and wage statues and regulations, and licensing laws and regulations. When required, the Engineer shall furnish the County with satisfactory proof of its compliance.

**ARTICLE 21
INDEMNIFICATION**

THE ENGINEER SHALL SAVE HARMLESS THE COUNTY AND ITS OFFICERS AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF THE ENGINEER, ITS AGENTS, OR EMPLOYEES PERFORMED UNDER THIS CONTRACT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE ENGINEER OR OF ANY PERSON EMPLOYED BY THE ENGINEER. THE ENGINEER SHALL ALSO SAVE HARMLESS THE COUNTY FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY THE COUNTY IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON THE COUNTY AS A RESULT OF SUCH ERROR, OMISSION, OR NEGLIGENT ACTIVITY BY THE ENGINEER, ITS AGENTS, OR EMPLOYEES.

**ARTICLE 22
ENGINEER'S RESPONSIBILITY**

The Engineer shall be responsible for the accuracy of its work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation. The Engineer will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the project has been completed.

**ARTICLE 23
ENGINEER'S SEAL**

The responsible Engineer shall sign, seal, and date all appropriate engineering submissions to the County in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

**ARTICLE 24
RETENTION, AVAILABILITY OF RECORDS AND AUDIT REQUIREMENTS**

The Engineer shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at its office during the contract period and for four (4) years from the date of final payment under this contract or until pending litigation has been completely and fully resolved, whichever occurs last. The County or any of its duly authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the Engineer which are directly pertinent to this contract for the purpose of making audits,

examinations, excerpts, transcriptions, and for checking the amount of work performed by the Engineer.

ARTICLE 25 INSURANCE

The Engineer shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

1. Workers' Compensation, endorsed with a waiver of subrogation in favor of Nueces County in the amount of the statutory obligations imposed under the Texas Workers' Compensation Law ("Statutory Texas").
2. Commercial General Liability, endorsed with the County as an additional insured and endorsed with a waiver of subrogation in favor of Nueces County, in limits of liability not less than one million dollars (\$1,000,000) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
3. Texas Business Automobile Policy, endorsed with the County as an additional insured and endorsed with a waiver of subrogation in favor of Nueces County, in limits of liability not less than two hundred fifty thousand dollars (\$250,000) each person for bodily injury, five hundred thousand dollars (\$500,000) each occurrence for bodily injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.
4. Professional Liability in limits of one million dollars (\$1,000,000) each occurrence and in the aggregate.

The work shall not be commenced by Engineer until after the policy, or policies evidencing the insurance coverage herein required, or certificates of such insurance, providing that the insurer shall give County thirty (30) days written notice prior to cancellation, material revision or intention not to renew, have been submitted to the County. In the event the Insurer refuses to provide the County with notice as detailed, the Engineer agrees to provide notice in writing immediately, and shall suspend all work until insurance is restored and proof, in a form acceptable to the County, is provided.

The Engineer, at his/her expense, shall purchase and maintain in force at all times during the term of this Contract the insurance with limits not less than indicated above. The Engineer will be considered in breach of contract should the Engineer fail to maintain the required insurance coverage during the contract period of this contract. The termination of this contract resulting from failure to maintain the required insurance will be carried out in accordance with Article 18 – Termination.

**ARTICLE 26
SUCCESSORS AND ASSIGNS**

The Engineer and the County do hereby bind themselves, their successors, executors, administrators, and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

The Engineer shall not assign, subcontract, or transfer its interest in this contract without the prior written consent of the County.

**ARTICLE 27
SEVERABILITY**

In the event any one or more of the provisions contained in this contract, for any reason, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**ARTICLE 28
CONTRIBUTIONS**

It is expressly understood by the County and the Engineer, that from the award date of the contract to one year after termination or expiration of contract term, it is prohibited for any county official or employee thereof, to receive gifts described by Section 5.02 of the County Personnel or Civil Service Rules, and/or campaign or political contributions regardless of amount from the Engineer or principal owners of said Engineering firm. County Official is defined as those individuals described as county and precinct officers in Subchapter B of Chapter 152 of the Local Government Code. The Engineer is furthermore prohibited from making political campaign or personal contributions to candidates for county and precinct office from the date of award of contract to one year after termination or expiration of contract term. It is also prohibited for the Engineer to contribute to employee associations or for the benefit of groups of employees.

**ARTICLE 29
NOTICES**

All notices to either party by the other, required under this contract, shall be personally delivered or mailed to such party at the following respective address:

COUNTY

ENGINEER

Nueces County Judge

Naismith Engineering, Inc.

901 Leopard Street, Room 303

4501 Gollihar Road

Corpus Christi, Texas 78401

Corpus Christi, Texas 78411

**ARTICLE 30
SIGNATORY WARRANTY**

The undersigned signatory for the Engineer hereby represents and warrants that the signatory is an officer of the organization for which he or she has executed this contract on behalf of the firm.

IN WITNESS WHEREOF, the County and the Engineer have executed these presents in duplicate.

COUNTY OF NUECES

ENGINEER: NAISMITH ENGINEERING, INC.

By: _____
County Judge

By: _____

Title: _____

Date: _____

Date: _____

ATTEST:

County Clerk

List of Attachments

- Attachment A – Services To Be Provided By The County
- Attachment B – Services To Be Provided By The Engineer
- Attachment C – Work Schedule
- Attachment D – Fee Schedule
- Attachment E – Work Authorization

ATTACHMENT A
PROFESSIONAL SERVICES

Services to be provided by the County:

- Attend project meetings/phone conferences/etc.
- Provide access to Hazel Bazemore Park
- Obtain CBBEP approvals of NEI Contract
- Provide timely reviews of design submissions
- Responsible for all construction coordination to include, but is not limited to, observing construction for progress and conformance; attend progress meetings if scheduled; and conducting the final project inspections for conformance to the construction documents.

ATTACHMENT B
PROFESSIONAL SERVICES

Services to be provided by the Professional Services Contractor for Phase 1&2 elements as described in the Nueces County and CBBEP Contract No. 1416 (20130299) executed on December 18, 2013 Attachment A, herein attached and incorporated in its entirety :

- Attend project meetings/phone conferences/etc.
- Provide site/field survey
- Prepare schematic designs
- Provide final design services to include, but is not limited to, completion of project drawings (signed and sealed by the design professional) after the initial/schematic design is reviewed and accepted.

It shall not be the Engineer's responsibility to prepare, submit, or arrange for any permits, approvals, or inspections required for the work except for Americans with disabilities submissions and approvals.

**ATTACHMENT C
WORK SCHEDULE**

Task	Maximum Amount Payable (USD)	Working Days
Project Communications / Meetings	1,400.00	10 Days
Site / Field Survey	1,400.00	5 Days
Schematic Design Services	4,300.00	45 Days
Final Design Services	1,400.00	30 Days
Total	8,500.00	90 Days

ATTACHMENT D
FEE SCHEDULE

Job Title	Hourly Rate (USD)	Total Hours	Maximum Amount Payable (USD)
Sr. Project Architect/Scientist	175.00	12	2,100.00
Project Architect/Scientist	150.00	8	1,200.00
Architectural Intern	110.00	36	3,690.00
Drafter	80.00	4.3	345.00
Administrator	80.00	2	160.00
Administrative Assistant	70.00	2	140.00
Accessibility Registration / Review	Contract Amount	--	865.00
Total Payable			8,500.00

**ATTACHMENT E
WORK AUTHORIZATION**

This work authorization is issued in accordance with the Professional Services Contract, dated _____, between Nueces County and Naismith Engineering, Inc.

Work Task:

Attend project meetings/phone conferences/etc.

Provide site/field survey

Prepare schematic designs

Provide final design services

Accessibility registration and review

Cost: \$8,500.00

Deliverables: Schematic Design
 Final Design Plans and Specs

Completion Date: March 31, 2015

COUNTY OF NUECES

NAISMITH ENGINEERING, INC.

By: _____

By: _____

Title: County Judge

Title: _____

Date: _____

Date: _____

ATTACHMENT A

**HAZEL BAY MORE PARK ECOLOGICAL ENHANCEMENT,
PUBLIC ACCESS AND ECO/NATURE TOURISM INITIATIVE
PROJECT COST ESTIMATE
(Revised 12-10-13)**

PHASE 1: Marsh Overlook (approved by CBBEP in 2011) Construction	ESTIMATED QUANTITY	UNIT PRICE	TOTAL FUNDING
PHASE 1 – COMPLETED			
Item 1: Access Path (300') Materials			\$5,000.00
Item 2: Boardwalk to Overlook (75') Materials only			\$7,000.00
Item 3: Overlook Kiosk- Covered (Materials only)			\$7,000.00
	Sub Total Phase 1 Construction		\$19,000.00
Engineering Design/Park Planning/Permitting *County Staff provides construction		Sub Total Phase 1 Engineering	\$6,000.00
	Sum Total		\$25,000.00
PHASE 2: Bottomland Trail (Proposed for 2013 CBBEP funds), Reduced Scope and Budget: Bridge, Parking, Cleanup, Signage Construction			
Item 1: Provide caliche parking for 9 cars including one (1) paved spaces with accessible isle for ADA accessible parking requirements for new bottomland bridge and trail, including bollards for controlling vehicle access near the river and new parking area (materials only, County labor)	1	\$ 6,500 EA	\$6,500
Item 2: Timber framed bridge (40' x 6' @ \$400/LF) over current drainage ditch to cross over to future nature trails in the potential park land addition (materials only, County staff builds)	1	\$20,000 EA	\$20,000
Item 3: Timber Observation Blind at end of Phase 1 bottomland trail section (6' x 12') (materials only County labor)	1	\$2,400 EA	\$2,400
Item 4: Provide initial 200' trail to the bottomland observation blind (6' wide limestone @ \$21.00/LF)	200 FT	\$33.00/LF	\$6,600
Item 5: Proposed ADA accessible path (100' asphalt) to pond observation kiosk (6' wide @ \$9.00/SF)	0 SF	\$9.00/SF	\$0
Item 6: Provide timber (25'x 25') overlook pavilion with canopy overlooking wildlife observation areas (materials only, County builds)	0	\$22,000 EA	Funds not available
Item 7: Provide interpretive signage along the new bottomland nature trail	1	\$5,000 EA	\$5,000
Item 8: Bottomland nature trail cleanup and habitat restoration through cleanup of debris and trash (hauling and disposal costs and cleanup)	1	\$4,000 EA	\$4,000
Item 9: Pond creation near Marsh Overlook	1	\$8,000 EA	Funds not available
		Sub Total Phase 2 Construction	\$44,500
Engineering Architectural Design/Permitting Item 1: Design/Planning/Permitting		Sub Total Phase 2 Engineering	\$12,500
		Sum Total	\$57,000

County In-kind Contribution \$20,000.00