

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**AGREEMENT FOR PROFESSIONAL STRUCTURAL ENGINEERING DESIGN SERVICES  
BLUERIDGE PARK EXPANSION PROJECT**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Jaymark Engineering Corporation, (hereinafter "Jaymark" or "Consultant"), a company authorized to conduct business in the State of Texas. County and Jaymark may be referred to individually as a "Party" or collectively as the "Parties."

**WITNESSETH**

WHEREAS, County desires that Jaymark provide professional engineering design services for Blueridge Park Expansion Project, (hereinafter "Services"); and

WHEREAS, County has determined Jaymark is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Jaymark have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Jaymark represents that it is qualified and desires to perform such services; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional design services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Scope of Services**

Jaymark shall render Services to County as defined in the Proposal Agreement Letter dated October 11, 2023 (hereinafter "Services"), attached hereto as Exhibit "A" and incorporated by reference for all intents and purposes.

**Section 2. Personnel**

2.1 Jaymark represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Jaymark shall furnish and maintain, at its own expense, adequate and

sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Jaymark shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Jaymark who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Section 3. Compensation and Payment**

3.1 The Maximum Compensation for the performance of Services within the Proposal described in Exhibit A is Sixty-Four Thousand Eight Hundred and no/100 dollars (\$64,800.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without written amendment executed by the parties.

3.2 All performance of the Scope of Services by Jaymark including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Jaymark based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff designated by Parks and Recreation Director, one (1) electronic (pdf) and/or one (1) original copy of invoice showing the amounts due for services performed in a form acceptable to County. Jaymark may submit electronically via: [apauditor@fortbendcountytexas.gov](mailto:apauditor@fortbendcountytexas.gov). County shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

4.1 Jaymark clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Sixty-Four Thousand Eight Hundred and no/100 dollars (\$64,800.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Jaymark does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Jaymark shall not under any conditions, circumstances, or interpretations thereof exceed Sixty-Four Thousand Eight Hundred and no/100 dollars (\$64,800.00).

### **Section 5. Time of Performance**

The time for performance of the Scope of Services by Jaymark shall begin with receipt of the Notice to Proceed from County.

## **Section 6. Modifications and Waivers**

6.1 The Parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the Parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon thirty (30) days written notice.

### **7.2 Termination for Default**

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Jaymark fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Jaymark materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Jaymark was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Jaymark in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Jaymark's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Jaymark.

## **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Jaymark as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Jaymark shall promptly furnish all such data and material to County on request. If the County modifies and/or uses the documents for any reason other than their intended use, without Jaymark's authorization, the Jaymark shall be released from any liability as a result of such action.

## **Section 9. Inspection of Books and Records**

Jaymark will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Jaymark for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

## **Section 10. Insurance**

10.1 Prior to commencement of the Services, Jaymark shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Jaymark shall provide certified copies of insurance endorsements and/or policies if requested by County. Jaymark shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability Insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance with limits not less than \$1,000,000.

10.2 County shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies including Workers' Compensation written on behalf of Consultant, excluding Professional Liability, shall contain a waiver of subrogation in favor of County.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

10.4 Jaymark shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by County.

10.5 No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

10.6 Approval of the insurance by County shall not relieve or decrease the liability of Jaymark.

#### **Section 11. Indemnity**

**TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL. CONSULTANT SHALL FURTHER PROCURE AND MAINTAIN GENERAL LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 10 OF THIS AGREEMENT AND SHALL FURNISH A CERTIFICATE OF INSURANCE FOR THE SAME SHOWING FORT BEND COUNTY, TEXAS AS AN ADDITIONAL INSURED.**

#### **Section 12. Confidential and Proprietary Information**

12.1 Jaymark acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Jaymark or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Jaymark shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Jaymark) publicly known or is

contained in a publicly available document; (b) is rightfully in Jaymark 's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Jaymark who can be shown to have had no access to the Confidential Information.

12.2 Jaymark agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Jaymark uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, unless disclosure is required by law or court order, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Jaymark shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Jaymark shall advise County immediately in the event Jaymark learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Jaymark will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Jaymark against any such person. Jaymark agrees that, except as directed by County, Jaymark will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Jaymark will promptly turn over to County all documents, papers, and other matter in Jaymark's possession which embody Confidential Information; provided however, that Jaymark may retain one (1) copy of all work produced which incorporates Confidential Information for internal record-keeping purposes, subject to the terms of this Agreement.

12.3 Jaymark acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Jaymark acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Jaymark in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Jaymark expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Jaymark shall not be disclosed to any third party, except as directed by the Texas Attorney

General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

### **Section 13. Independent Consultant**

13.1 In the performance of work or services hereunder, Jaymark shall be deemed an independent Consultant, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

### **Section 14. Notices**

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Parks and Recreation Attn: Director 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
Consultant:	Jaymark Engineering Corporation 3730 Cypress Creek Parkway, Suite 108 Houston, Texas 77068

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section 15. Compliance with Laws**

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Section 16. Standard of Care**

Consultant represents to County that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Consultant shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.

#### **Section 17. Assignment**

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

#### **Section 18. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.



#### **Section 19. Successors and Assigns**

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

#### **Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

#### **Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

#### **Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

#### **Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

#### **Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

#### **Section 25. Certain State Law Requirements for Contracts**

The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Consultant hereby verifies that Consultant and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
- (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
- (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

**Section 26. Human Trafficking**

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

**[EXECUTION PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party.

**FORT BEND COUNTY**

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

**JAYMARK ENGINEERING CORPORATION**

\_\_\_\_\_  
Authorized Agent- Signature

\_\_\_\_\_  
Authorized Agent- Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Darren McCarthy,  
Parks and Recreation Director

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

Exhibit A: Proposal Agreement Letter dated October 11, 2023

i:\agreements\2024 agreements\parks\jaymark engineering corp (24-parks-100169)\agreement for structural engineering design svcs.blueridge park expansion project (kcj - 10.30.2023) v2 11.02.2023 v3

# EXHIBIT A

## **Agreement**

October 11, 2023

Niti Tataria  
Asakura Robinson  
2500 Summer St. #3228  
Houston, TX 77007

The purpose of this agreement is to engage the services of Jaymark Engineering Corporation to provide structural engineering design services for the Blue Ridge Park Project.

### **Scope of Services:**

All design work will be completed to address all plan review comments.

- Boardwalk – 108' Length and 12' wide (review only)
- Pier – 62' Length and 12' wide (review only)
- Basketball Court (foundation) – 50' X 94' (slab on grade)
- Pickle ball Court (foundation) – 30' X 60' (slab on grade)
- Covered Exercise Area (concrete slab and footings for the covered structure) – 50' X 32'
- Small Picnic Pavilions (including concrete pad, foundation, and review of roof structure) – 10' X 15' (quantity: 4)
- Big Picnic Pavilions (including concrete pad, foundation, and review of roof structure) – 20' X 35' (quantity: 3)
- Hilltop Pavilion (including concrete pad, foundation, and review roof structure) – 30' X 60'
- Ramps and stairs to hilltop pavilion (the existing hill might be 12 to 14 feet high)
- Amphitheater seat walls
- Stage (concrete slab)
- Entry Sign (foundation)
- Way finding Sign (foundation)
- Picnic Table and benches (review only)
- Restroom (review only)
- Play equipment (review only)
- Parking lot lighting (footings)

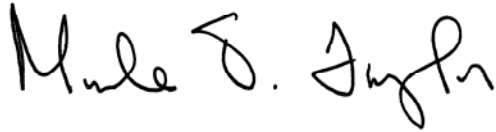
### **Fees:**

Structural Engineering design fee: \$64,800.00

### **Services that will be provided by the Client:**

The Client shall provide the geotechnical engineering report.

If this agreement is satisfactory, please sign below:



Mark D. Taylor, P.E., President  
Jaymark Engineering Corporation

Client Representative