

25B

FORT BEND COUNTY FY 2010
COMMISSIONERS COURT AGENDA REQUEST FORM
Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: June 02, 2010

Submitted By: Laura Dougherty

Court Agenda Date: June 08, 2010

Department: Facilities Management & Planning

Phone Number: 281-633-7017

SUMMARY OF ITEM:

Take all appropriate action to approve the Agreement with Jaymark Engineering Corporation, for Project Management Services, in the amount of \$36,000.00, relating to the Senior Citizen Center

RENEWAL AGREEMENT/APPOINTMENT

YES

☐

NO

☐

REVIEWED BY COUNTY ATTORNEY'S OFFICE:

YES

☒

NO

☐

List Supporting Documents Attached: Agreement

FINANCIAL SUMMARY:

BUDGETED ITEM: YES ☒

NO ☐

FUNDING SOURCE: Accounting Unit: 100687888

Account Number:

Activity (If Applicable): P687-09SRCITCOM

DESCRIPTION OF LAWSON ACCOUNT: Senior Citizen Building

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input checked="" type="checkbox"/> Auditor	(281-341-3774)	<input checked="" type="checkbox"/> Comm. Pct. 1	(281-342-0587)
<input checked="" type="checkbox"/> Budget Officer	(281-344-3954)	<input checked="" type="checkbox"/> Comm. Pct. 2	(281-403-8009)
<input checked="" type="checkbox"/> Facilities/Planning	(281-633-7022)	<input checked="" type="checkbox"/> Comm. Pct. 3	(281-242-9060)
<input checked="" type="checkbox"/> Purchasing Agent	(281-341-8642)	<input checked="" type="checkbox"/> Comm. Pct. 4	(281-980-9077)
<input checked="" type="checkbox"/> Information Technology	(281-341-4526)	<input checked="" type="checkbox"/> County Clerk	(281-341-8697)
<input type="checkbox"/> Other:		<input checked="" type="checkbox"/> County Atty	(281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): Please Approve

6-9-10 orig. ret. to Laura at Facilities

Fm101626

STATE OF TEXAS

COUNTY OF FORT BEND

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

AGREEMENT FOR PROFESSIONAL PROJECT MANAGEMENT SERVICES

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as "Owner"), and JAYMARK ENGINEERING CORPORATION, (hereinafter referred to as "Project Manager") authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, Owner desires to retain the services of a Project Manager to perform certain Services for Owner relating to construction of the Fort Bend County Pct 2 Senior Center located in Missouri City, Fort Bend County, Texas, hereinafter referred to as "the Project." Owner has selected Project Manager as the entity to be engaged as the Project Manager for the project contemplated by Owner. Owner and Project Manager desire to execute and enter into this Agreement for the purpose of setting forth their agreement with regard to the foregoing; and,

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

WHEREAS, Owner has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE.

NOW, THEREFORE, Owner and Project Manager, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION I SCOPE OF AGREEMENT

- 1.01 Nature of Project Manager's Services and Responsibilities. Owner acknowledges and agrees that Project Manager's responsibilities under this Agreement consist primarily of advising and consulting with Owner in connection with the Project. Owner further acknowledges that Project Manager is not itself preparing any design or engineering plans or specifications or performing any of the construction or furnishing any of the materials required for the Project. Owner agrees that Project Manager shall have no liability for or with respect to professional services rendered by others, plans, designs or specifications provided by others, construction work performed by others, or materials furnished by others (including without limitation any architect, engineer, construction manager or contractor) in connection with Project Manager's responsibilities under this Agreement. However, Project Manager has certain review functions related to the Project and remains liable for such review functions. Project Manager will use its best efforts to assist the Owner in identifying and mitigating any hazardous materials that may exist relative to the Project, but assumes no responsibility to Owner in so doing. Project

RECEIVED
MAY 27 2010

BY: RG

Manager is responsible for, and is liable for its performance in accordance with this Agreement of, those services listed in Exhibit A, Project Manager's proposal dated May 3, 2010.

- 1.02 Key Personnel. Subject to the following provisions, Project Manager shall select the personnel and provide the services directly and may reassign personnel if reassignment does not materially impede the performance or schedule of Services. (a) Project Manager represents and warrants that it shall use its best efforts to assign and maintain key personnel to the Project whose qualifications and experience were presented in its written proposal to Owner, and that all personnel it uses in connection with fulfilling its obligations pursuant to or arising from this Agreement shall be employees of Project Manager or, if applicable, Project Manager's subcontractor(s) and shall be qualified to perform the tasks assigned them. (b) Project Manager shall provide the resume of any on-site Project Personnel to Owner upon the written request of Owner. (c) Project Manager shall notify Owner of its intent to use any on-site Project Personnel to perform Services under the Agreement and Owner may refuse the use of such Project Personnel by providing Project Manager notice of such rejection within three (3) business days of notification. (d) The Owner may, upon written notice to Project Manager, require Project Manager to remove an individual immediately from providing services for the following reasons: violation of the terms and conditions of this Agreement; violation of the Owner's work rules and regulations; criminal activity; or violation of state, federal, or municipal statutes. (e) Owner may, upon thirty (30) days written notice to the Project Manager, require Project Manager to remove an individual from providing Services without cause.
- 1.03 Project Manager's Cooperation. In performing the services as identified, the Project Manager shall act diligently and in good faith and shall cooperate fully with the Owner in all matters relating to the project. The Project Manager shall act expeditiously on requests by the Owner regarding Project matters.

SECTION II EXTENT OF SERVICES AND TERM

- 2.01 Project Manager agrees to provide the services described in this Agreement and in Project Manager's Proposal dated May 3, 2010, as included in Exhibit A, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes, in addition to the services included and described in this Agreement.
- 2.02 Project Manager agrees to provide the services for the Project until the date thirty (30) consecutive days after the date of completion, during which time the Project Manager will provide the Owner a complete punchlist, training, close out documents and construction warranty satisfaction from the parties who construct the improvements, and assisting Owner in occupying, equipping and furnishing the Project.
- 2.03 Term. The term of this Agreement shall commence on the date approved by Owner and shall continue, unless sooner terminated as herein provided, until the date as identified in Section 2.02 above.

SECTION III
PROJECT MANAGER'S COMPENSATION

- 3.01 For and in consideration of the services rendered by Project Manager, and subject to the limit of appropriation under Section VII, Owner shall pay to Project Manager an amount not to exceed \$36,000.00, including reimbursable expenses, if any.
- 3.02 Project Manager shall submit invoices to Owner and Owner shall pay each invoice within thirty (30) days after the Owner's Director of Facilities Management & Planning Department written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by the Project Manager to the point indicated by such invoice or of receipt or acceptance by the Owner of the services covered by such invoice.
- 3.03 Project Manager's fees shall be calculated at rates not to exceed the amounts included on Exhibit B, incorporated by reference herein as if set-forth verbatim.

SECTION IV
TERMINATION

- 4.01 Owner may terminate this Agreement at any time by providing ten (10) days written notice to the Project Manager.
- 4.02 Upon receipt of such notice, the Project Manager shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination, the Project Manager shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 4.04 Owner shall then pay the Project Manager that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the Owner when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION V
INSURANCE

Project Manager shall, prior to performing billable services and for the duration of term of this Agreement, keep in full force and effect a policy of general liability insurance of not less than \$1,000,000.00 for each claim aggregate, which shall be approved by the Fort Bend County Risk Management Department prior to purchase. The policy shall contain a clause that the insurer will not cancel or reduce the insurance without first giving Owner ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certification of insurance shall be delivered to the Fort Bend County Risk Management Department as soon as available. Failure of Project Manager to provide the appropriate insurance information shall invalidate this Agreement.

SECTION VI
NOTICE

- 6.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Owner or the Project Manager at the addresses set forth below.
- 6.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 6.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to the Project Manager:

Jaymark Engineering Corporation
Attn: Mark D. Taylor, P.E.
16000 Stuebner Airline, Suite 320
Spring, Texas 77379
281-374-0391 - fax

B. If to Owner notice must be sent to both the Fort Bend County Purchasing Agent and County Project Manager:

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
4520 Reading Road, Suite A
Rosenberg TX 77471

Facilities Management and Planning
Don Brady, Director
301 Jackson
Richmond, Texas 77469

- 6.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VII
LIMIT OF APPROPRIATION

- 7.01 Prior to the execution of this Agreement, Project Manager has been advised by Owner, and Project Manager clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that Owner shall have available the total maximum sum of \$36,000.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by Owner.
- 7.02 Project Manager does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Project Manager may become entitled to hereunder and the total maximum sum that

Owner shall become liable to pay to Project Manager hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$36,000.00 for described scope of work herein and in Exhibit A.

SECTION VIII SUCCESSORS AND ASSIGNS

- 8.01 Owner and Project Manager 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 such other party, in respect to all covenants of this Agreement.
- 8.02 Neither Owner nor Project Manager shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 8.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION IX PUBLIC CONTACT

- 9.01 Contact with any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of Owner.
- 9.02 Under no circumstances, whatsoever, shall Project Manager release any material or information developed in the performance of its services hereunder without the express written permission of Owner, except where required to do so by law.

SECTION X COMPLIANCE AND STANDARDS

- 10.01 In the performance of its duties and obligations under this Agreement, Project Manager shall, subject to budgetary constraints and limitations imposed by Owner on the Project, perform diligently and in good faith. Project Manager represents that it accepts a fiduciary role and responsibility with respect to Owner and shall, to its best abilities, act in the best interests of Owner and the timely completion of the Work. Project Manager agrees and understands that neither it nor any of its agents or employees may act in the name of Owner except and unless specifically authorized in writing by Owner to do so.
- 10.02 Indemnity of Owner. Project Manager shall, and Project Manager does hereby agree to, indemnify Owner against, and hold and save Owner harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which Owner may suffer or incur, or which may be asserted against Owner, whether meritorious or not, which are caused by any gross negligence or willful misconduct of Project Manager or its agents or employees. Such indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement with respect to any occurrence preceding such expiration or termination. The foregoing notwithstanding, owner does not waive any immunity to which it is statutorily entitled.
- 10.03 Relationship to Insurance In no event shall the indemnification provisions of Section 10.02 above, diminish, affect, impede or impair, in any manner whatsoever, the benefits

to which any party may be entitled under any insurance policy with respect to the Project required by this Agreement or otherwise, or under the terms of any waiver of any subrogation contained therein.

- 10.04 No Third-Party Beneficiaries. None of the duties and obligations of Project Manager under this Agreement shall in any way or in any manner be deemed to create any liability of Project Manager to, or any rights in, any person or entity other than Owner.
- 10.05 Independent Contractors. No person who shall be engaged as an independent contractor by either Owner or Project Manager, or both, shall be considered an employee, servant, agent or other person for whom either Owner or Project Manager (as the case may be) is responsible for the purposes of Indemnifications in the foregoing sections of this Section X.

SECTION XI RECORDS, REPORTS, FISCAL MATTERS

- 11.01 Project Manager shall maintain for Owner a current and complete account of all transactions with respect to the Project. Such accounting shall be maintained at Project Manager's office at the Project site, or at such other place as the parties shall agree upon, and Owner and Owner's accountants and auditors shall have access to such books of accounts at all reasonable times. Project Manager shall maintain said accounting in a safe manner and separate from any accounts not dealing directly with the Project. Such accounting shall be kept in accordance with sound accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by Owner.
- 11.02 Records. Project Manager shall maintain, in a secure and safe manner, complete and identifiable records on all matters pertaining to Project Manager's activities under this Agreement on behalf of Owner with respect to the Project.
- 11.03 Property of Owner. All such books of account and records shall be and remain the property of Owner, and, upon the expiration or earlier termination of this Agreement, shall be turned over to Owner as provided in Section XII hereof. Such books and records shall thereafter be available to Project Manager at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years from the expiration date or earlier date of termination of this Agreement, upon reasonable prior notice to Owner and at the expense of Project Manager. Any equipment or supplies purchased for Owner and charged to Owner by Project Manager, having a usable life at the expiration of this Agreement, shall be the property of the Owner, and shall be turned over to the Owner as provided in Section XII.
- 11.04 Reports. Not later than the tenth (10th) day of each month during the term of this Agreement, with respect to the preceding calendar month, Project Manager shall furnish Owner a statement of all disbursements recommended to the Owner by Project Manager in connection with the Project for the preceding calendar month, prepared in such reasonable detail and form as shall be required by Owner.
- 11.05 Audit. Owner shall have the right, during normal business hours, to inspect, copy and audit at any time, and from time to time, all of Project Manager's files, books, records, costs and expenses pertaining to the Project. If Owner elects to audit Project Manager's files, books, records, costs and expenses pertaining to the Project, and the audit discloses

a discrepancy of one percent (1%) or more from the payment applications or invoices, then, in addition to repaying Owner all sums owing, Project Manager shall pay the cost of the audit.

- 11.06 No Duty of Project Manager to Provide Funds. Under no circumstances shall Project Manager have any duty or obligation to advance any funds for the account of Owner, but if Project Manager does advance any of its own funds for the account of Owner, Owner shall promptly reimburse Project Manager.

SECTION XII

EXPIRATION, TERMINATION, SUSPENSION OR ABANDONMENT

- 12.01 Terminating Events. The engagement of Project Manager hereunder may be terminated upon the happening of any of the following events pursuant to the provisions described below:
- A. Either Owner or Project Manager defaults under this Agreement and the non-defaulting party elects to terminate this Agreement as provided in Section XIII hereof.
 - B. The giving of written notice from Owner in the event: (i) any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Project Manager; (ii) Project Manager shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (iii) an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Project Manager in any involuntary proceeding against Project Manager under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against Project Manager and shall continue for a period of ninety (90) days after commencement without dismissal.
 - C. The giving of written notice from Project Manager in the event: (i) any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Owner; (ii) Owner shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (iii) an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Owner in any involuntary proceeding against Owner under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against Owner and shall continue for a period of ninety (90) days after commencement without dismissal.
 - D. The giving of written notice from Owner that the Project is being either abandoned or suspended for more than three hundred sixty-five (365) consecutive days.
 - E. The giving of written notice from Project Manager if the Project is suspended by Owner for more than ninety (90) consecutive days.
 - F. Owner or Project Manager may terminate this agreement, without cause, by providing Project Manager thirty (30) days prior written notice.
- 12.02 Project Manager's Obligations. Upon the expiration or earlier termination of this Agreement, Project Manager shall promptly:

- A. Upon request by Owner, deliver to Owner or such other person as Owner shall designate all materials, supplies, equipment, keys, contracts and documents, all books of account maintained pursuant to Section XI hereof, and all records maintained pursuant to Section XI hereof, pertaining to this Agreement and the Project.
 - B. Subject to Project Manager's obtaining any consent of any third party required therefor, assign all existing contracts approved by Owner relating to the Project to Owner or such other person or entity as Owner shall designate. Any contract or agreement that Project Manager negotiates on behalf of Owner that is subject to this paragraph shall contain a statement that prohibits such third party from unreasonably withholding the requisite consent.
 - C. Furnish all such information, take all such other action, and cooperate with Owner as Owner shall reasonably require in order to effectuate an orderly and systematic termination of Project Manager's services, duties, obligations and activities hereunder.
 - D. Within thirty (30) days after the expiration or termination of this Agreement, cause to be furnished to Owner a report similar in form and content to Project Manager's monthly reports covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.
 - E. Furnish a report of all outstanding orders for services, materials and supplies ordered by Project Manager as a result of its obligations arising under this Agreement at the time of expiration or termination. Such report shall include the status of payment for such services, i.e., whether they have been charged to or paid by Project Manager, and whether they have been charged to or paid by Owner. Such report shall be furnished no later than thirty days after the date of expiration or termination.
- 12.03 Owner's Obligations. Upon the expiration or earlier termination of this Agreement, Owner shall promptly:
- A. Assume any contracts which may have been entered into by Project Manager in its own name relating to the Project, provided, however, that Owner has specifically authorized Project Manager to enter into such contract.
 - B. Pay the cost of all services, materials and supplies, if any, which may have been ordered by Project Manager as a result of its obligations arising under this Agreement that has not been charged to or paid by Project Manager and reimbursed under this Agreement at the time of expiration or termination, but have since been paid for by Project Manager and were included in the report submitted pursuant to Section 12.02(E) above; provided, however, that Owner actually receives such services, materials and supplies in a satisfactory manner or condition; provided further that demand for such payment is in a reasonable and timely manner.
- 12.04 Suspension. If the Project is suspended by Owner for more than thirty (30) consecutive days, Project Manager shall be compensated for services prior to notice of such suspension. In the event the Project is resumed, the Project Management Fee shall be equitably adjusted by written amendment to this Agreement to provide for Project Manager's expenses incurred in the interruption and resumption of its services.

SECTION XIII
DEFAULT AND REMEDIES

- 13.01 Default by Project Manager. Project Manager shall be in default under this Agreement if Project Manager fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within thirty (30) days after receipt of written notice from Owner with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such thirty (30) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Project Manager commences such cure within thirty (30) days after receipt of written notice from Owner and thereafter proceeds diligently and in good faith to cure.
- 13.02 Remedies of Owner. Upon the occurrence of a default by Project Manager under this Agreement, Owner may pursue any one or more of the following remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:
- A. Owner may terminate this Agreement by giving Project Manager thirty (30) days advanced written notice of such termination, in which event this Agreement shall be terminated at the time designated by Owner in its notice of termination to Project Manager, subject to the provisions of Section XII of this Agreement.
 - B. With or without terminating this Agreement, Owner may bring an action against Project Manager to recover from Project Manager all damages, recoverable at law for reason of negligence, suffered, incurred or sustained by Owner as a result of, by reason of or in connection with such default.
- 13.03 Default by Owner. Owner shall be in default under this Agreement if Owner fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within thirty (30) days after receipt of written notice from Project Manager with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such thirty (30) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Owner commences such cure within thirty (30) days after receipt of written notice from Project Manager and thereafter proceeds diligently and in good faith to cure.
- 13.04 Remedies of Project Manager. Upon the occurrence of a default by Owner under this Agreement, Project Manager may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:
- A. Project Manager may terminate this Agreement by giving Owner thirty (30) days advanced written notice of such termination, in which event this Agreement shall be terminated at the time designated by Project Manager in its notice of termination to Owner.
 - B. With or without terminating this Agreement, Project Manager may bring an action against Owner to recover from Owner all damages, recoverable at law, suffered, incurred or sustained by Project Manager as a result of, by reason of or in connection with such default.
- 13.05 Other Remedies. In the event of the occurrence of a default hereunder, the prevailing party shall, in addition to its other rights and remedies hereunder, have the right to

recover from the party in default all reasonable costs and expenses incurred by the prevailing party in enforcing its rights and remedies hereunder, including reasonable attorneys' fees. The termination of this Agreement by either Project Manager or Owner by reason of default by the other party shall not relieve either party of any of its duties and obligations theretofore accrued under this Agreement prior to the effective date of such termination.

SECTION XIV REPRESENTATIONS AND WARRANTIES

- 14.01 Of Owner. Owner represents and warrants to Project Manager that: (i) Owner is a public body corporate and politic, duly organized, validly existing and in good standing under the laws of the State of Texas, is qualified to transact business in the State of Texas, and has the full and complete right, power and authority to enter into this Agreement and perform Owner's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and (ii) Owner is the true and lawful owner of the Project.
- 14.02 Of Project Manager. Project Manager represents and warrants to Owner that: (i) Project Manager is a corporation, duly organized, validly existing and in good standing under the laws of the State of Texas, is qualified to transact business in the State of Texas, and has the full and complete right, power and authority to enter into this Agreement and perform Project Manager's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and (ii) Project Manager has obtained or will obtain all necessary licenses and permits which are required for Project Manager to perform Project Manager's Services pursuant to this Agreement.
- A. Project Manager warrants to Owner that: (1) Project Manager possesses the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Project Manager will use its best efforts to ensure that the Services provided under this Agreement will be performed, delivered, and conducted in accordance with the highest professional standards and in accordance with industry standards, (2) Project Manager will use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of Owner, and (3) following the date of acceptance of this Agreement, the Services provided by Project Manager to Owner will conform to the representations contained in this Agreement, including all attachments, schedules and exhibits. All warranties provided by Project Manager in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Owner.

SECTION XV MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XVI MISCELLANEOUS

- 16.01 Relationship Between Parties. The relationship of the parties shall be limited to the Project. Nothing herein shall be deemed to authorize Project Manager to act as the general agent of Owner.
- 16.02 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 16.03 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 16.04 Authorized representatives. Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by Owner or Project Manager, as the case may be, shall be given or taken by one or more of the authorized representatives of each. For purposes of this Agreement; (i) the authorized representatives of Owner shall be any one or more of the following – The Director of Facilities Management and Planning Department or designee, (ii) the authorized representatives of Project Manager shall be Mark D. Taylor, P.E., or designee. Any party hereto may from time to time designate other or replacement authorized representatives to the other party hereto. The written statements and representations of any authorized representative of Owner or Project Manager shall be binding upon the party for whom such person is an authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.
- 16.05 If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.
- 16.06 Non-Waiver. Failure by either party to complain of any action, non-action or default of the other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by either party of any right arising from any default of the other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.
- 16.07 Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

- 16.08 Time of Essence. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration of this Agreement.
- 16.07 Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Texas. Venue for any action regarding this agreement shall lie in Fort Bend County, Texas and/or the United States District Court, Southern District of Texas, Houston Division.
- 16.08 Entire Agreement. This Agreement, including Exhibit A & B, contains the entire agreement of Owner and Project Manager with respect to the engagement of Project Manager as the Project Manager for the Project, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of no force or effect.
- 16.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
- 16.10 If there is a conflict between this Agreement and Exhibit A & B, the provisions of this Agreement shall prevail.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SECTION XVII
EXECUTION

This Agreement shall not become effective until executed by Owner.

OWNER: FORT BEND COUNTY

By:

Robert E. Hebert
Robert E. Hebert, County Judge

Date

6-8-2010

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

APPROVED:

By:

Don Brady
Don Brady, Director
County Facilities Management
& Planning Department

Date

6-7-10

PROJECT MANAGER: JAYMARK ENGINEERING CORPORATION

Mark D. Taylor
Mark D. Taylor, P.E.,
Principal

Date

6-1-2010

MER:PM Agr.Jaymark Engineering.Senior Center.3858

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$36,000 to accomplish and pay the obligation of the Fort Bend County under this contract.

Ed Sturdivant
Ed Sturdivant, Fort Bend County Auditor

Exhibit A: May 3, 2010 Proposal from Project Manager
Exhibit B: Project Manager's Bill Rate Schedule

Exhibit A



JAYMARK ENGINEERING CORPORATION

May 3, 2010

Katie L. Herrington
EA/Project Coordinator
Fort Bend County Precinct 2

RE: Fort Bend Senior Center
Proposal for Project Management Services

Dear Ms. Herrington:

Our fee to provide project management services for the above referenced project will be in the amount of \$36,000.00.

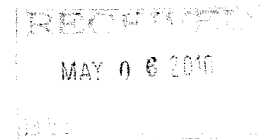
Jaymark Engineering Corporation will provide the following services:

- Main project books.
- Ensure that construction management conforms to the plans, specifications and purpose of design.
- Review monthly construction contractor pay estimates for reasonable close conformance with the plans and specifications.
- Review work, resolve problems and make decisions in a timely manner as requested by Fort Bend County.

If there are any questions, please contact me at 281-374-0399, Ext. 11.

Sincerely,

Mark D. Taylor, P.E.
Principal



16000 Stuebner Airline, Suite 320 • Spring, TX 77379 • Phone: 281-374-0399 • Fax: 281-374-0391
Website: www.jaymarkengineering.com