

PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS

COUNTY OF NUECES

THIS CONTRACT FOR PROFESSIONAL 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 architectural and engineering services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act" provides for the procurement of professional services of engineers and architects; and
WHEREAS, the County desires to contract for architectural and engineering services described as follows:

Master Development Plan of Padre Balli Park RV/Tent Camping Facilities

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 I
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.

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 May 1, 2013, 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 3
CONTRACT PERIOD**

- 1. Building permits
- 2. Floodplain development permits
- 3. Dune protection permits
- 4. Access driveway permits
- 5. Utility permits
- 6. Americans with disabilities submissions and approvals
- 7. Asbestos inspections

Unless specifically excluded in Attachment B – Services To Be Provided By The Engineer, it shall be the Engineer's responsibility to prepare, submit, or arrange for any and all permits, approvals, or inspections required for the work. The permits, approvals or inspections shall include, but not be limited to, the following:

The Engineer shall prepare a schedule of work, identified as Attachment C – Work Schedule, attached hereto and made a part thereof this contract. The work schedule shall contain a complete schedule by task such that the Engineer's Scope of Services under this contract can be accomplished within the specified time and contract cost. Attachment C – Work Schedule shall identify the task, the total maximum dollar amount payable for each task, and time allotted to complete the job by date or working days. 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.

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.

**ARTICLE 2
SCOPE OF SERVICES TO BE PROVIDED BY ENGINEER**

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.

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.

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 Coastal Parks Director. The executed work authorization(s) shall become a part of this contract.

**ARTICLE 5
WORK AUTHORIZATIONS**

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.

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

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.

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

The maximum amount payable under this contract is \$ 37,850.00, unless modified as provided in Article 10 – Supplemental Agreements.

**ARTICLE 4
COMPENSATION AND METHOD OF PAYMENT**

**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.

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

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

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.

SUPPLEMENTAL AGREEMENTS
ARTICLE 10

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.

CHANGES IN WORK
ARTICLE 9

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.

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.

ADDITIONAL WORK
ARTICLE 8

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.

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.

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.

This contract may be terminated before the stated termination date by any of the following conditions:
This contract shall terminate at the close of business on May 1, 2013, unless extended as provided in Article 10 – Supplemental Agreements.

**ARTICLE 19
TERMINATION**

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 18
VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT**

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 NEGLIGENCE 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 NEGLIGENCE BY THE ENGINEER, ITS AGENTS, OR EMPLOYEES.

**ARTICLE 21
INDEMNIFICATION**

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 statutes and regulations, and licensing laws and regulations. When required, the Engineer shall furnish the County with satisfactory proof of its compliance.

**ARTICLE 20
COMPLIANCE WITH LAWS**

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.

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").

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

**ARTICLE 25
INSURANCE**

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, transcripts, and for checking the amount of work performed by the Engineer.

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

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.

The responsible Architect shall sign, seal, and date all appropriate Architectural submissions to the County in accordance with the Texas Civil Statutes and the rules of the Texas Board of Architectural Examiners.

**ARTICLE 23
ARCHITECT/ENGINEER'S SEAL**

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 22
ENGINEER'S RESPONSIBILITY**

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

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.

**ARTICLE 26
SUCCESSORS AND ASSIGNS**

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.

- 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.

ENGINEER	COUNTY
Naismith Engineering, Inc.	Nueces County Judge
4501 Gollihar	901 Leopard, Rm. 303
Corpus Christi, Texas 78411	Corpus Christi, Texas 78401

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:

**ARTICLE 29
NOTICES**

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 28
CONTRIBUTIONS**

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 27
SEVERABILITY**

**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:

By: _____
County Judge

By: _____
Title: _____
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

1. The county shall provide access to the site and any existing documents for the existing facilities.
2. The county shall define the scope of the master plan and components the county requires to be included.
3. The county shall be involved in meetings to refine the scope as the project progresses.
4. The county shall provide any printing required of the documents for final distribution.

SERVICES TO BE PROVIDED BY THE COUNTY

SERVICES TO BE PROVIDED BY THE ARCHITECT/ENGINEER

1. The Architect/Engineer shall attend preliminary conferences with the County regarding the requirements of the project.
2. The Architect/Engineer shall survey existing conditions to insure accuracy of the documents provided by the county.
3. The Architect/Engineer shall prepare a conceptual study and report on the project in sufficient detail to indicate clearly the alternate solutions available to the County, to include preliminary layouts, sketches and cost estimates for the project.
4. The Architect/Engineer shall define all wetland areas within the project area and document the finding to be included in the final master plan.
5. The Architect/Engineer shall produce final planning documents which will include drawings, cost estimates and phasing recommendations for implementation of the master plan.

WORK SCHEDULE

Task	Maximum Amount Payable	Working Days
Architectural/Engineering Master Planning Services - Conceptual	\$8,250.00	30 Days
Architectural/Engineering Master Planning Services - Final	\$12,500.00	60 Days
Environmental Services	\$4,100.00	30 Days
Landscaping & Planning Consultant	\$13,000.00	30 Days

Total = \$37,850.00 150 Days

FEE SCHEDULE

Job Title	Hourly Rate	Total Hours	Maximum Amount Payable
Project Principle Engineer	\$175.00	7	\$ 1,225.00
Project Architect	\$130.00	46	\$ 5,980.00
Architect Intern	\$90.00	146	\$13,140.00
Project Environmental	\$115.00	11	\$ 1,265.00
Environmental Intern	\$90.00	23	\$ 2,070.00
Environmental Admin.	\$45.00	17	\$ 765.00
Administration	\$45.00	9	\$ 405.00
Landscape Architect	Contract Amount	N/A	\$13,000.00

Total = \$37,850.00

ATTACHMENT D

WORK AUTHORIZATION

This work authorization is issued in accordance with the _____ Services Contract, dated _____, between Nueces County and _____

Work Task:

Cost: _____

Deliverables:

Completion Date: _____

COUNTY OF NUECES

By: _____ Title: _____ Date: _____

By: _____ Title: _____ Date: _____