

ADDENDUM
TO
PROPOSAL NUMBER 1108-1306

GROUND ENGINEERING CONSULTANTS, INC. (the "Consultant") and PARKER JORDAN METROPOLITAN DISTRICT (the "District") entered into Proposal No. 1108-1306, dated the 18th day of October, 2011 (the "Agreement"), for materials testing and special inspection services related to the Cherry Creek Stream Reclamation Project within the Parker Jordan Centennial Open Space (the "Services"). The Consultant and District shall be individually referred to herein as a "Party" and collectively referred to herein as the "Parties." The Parties have agreed to enter into and incorporate this Addendum as part of the Agreement. In the event a conflict exists between this Addendum and the Agreement, the terms of this Addendum shall apply.

1. COMPENSATION AND METHOD OF PAYMENT.

A. Compensation. Compensation for the Services provided under the Agreement shall be based in accordance with the Agreement. The Consultant expressly understands and agrees that it is undertaking the authorized Services with a total not-to-exceed fee amount for the Contract Work of **Twenty-Four Thousand, Three Hundred Twenty-Five Dollars (\$24,325)**, without prior written consent from the District. Direct reimbursable expenses of the Consultant, such as reproduction, telephone, postage and messenger services shall be billed at cost. Mileage shall be billed at the rate allowed under rules and regulations promulgated pursuant to the Internal Revenue Code or as adjusted by mutual agreement of the Parties. Without the prior written consent of the District, the Consultant shall not be paid any professional fees, compensation or expenses in excess of the amount authorized for the Services without the prior written approval of the District. If the Consultant performs any additional services prior to or without receiving a written request from the District, the Consultant shall not be entitled to any compensation for such additional services.

B. Invoices. The Consultant and the District acknowledge that there may be a reasonable lag time between receipt of the Consultant's invoice and subsequent payment due to the schedule of District meetings and the processing of the invoices for Board approval. The Consultant shall submit invoices to the District, no more often than monthly during the term of the Agreement on or before the tenth (10th) day of each month prior to the next regularly scheduled Board meeting, which shall include as supporting documentation:

- i. A progress narrative describing the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period, if requested by the District; and
- ii. An itemized statement of the Services performed, including documentation of the hourly time records of the Consultants personnel and billings from subcontractors, if any; and

- iii. A Certification by the Consultant that the Consultant is current with payment to all subcontractors and employees through the date of the invoice and, if not current, a description of the non-current items and the reasons for such; and
- iv. Any other reasonable information required by the District to process payment for an invoice.

C. Invoice Review. The Board, or such approved designee, shall review the submitted invoice information at or prior to the next regularly scheduled Board meeting and shall, within fifteen (15) days of such Board meeting, inform the Consultant of any disagreement with the amount invoiced or any portion of the invoice which is unsatisfactory. Approval of any invoice may be withheld in the amount which remains incorrect or for those portions which are unsatisfactory. The Consultant may re-submit an invoice for payment which does not include those items disputed or unsatisfactory. If the invoice is approved by the Board, the District shall promptly compensate the Consultant for the approved amount within thirty (30) days of approval.

2. INDEPENDENT CONTRACTOR. The Consultant is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and the Consultant's employees. Neither the Consultant nor any of its employees are or shall be deemed employees of the District. The Consultant is not, and shall not act as, the agent of the District. The Consultant has no authority to hire or contract on behalf of the District and shall not make any representation to the contrary. The employees who assist the Consultant in the performance of the Services shall at all times be under the Consultant's exclusive direction and control and shall be employees of the Consultant and not employees of the District. The Consultant shall pay all wages, salaries and other amounts due its employees in connection with the performance of the Services and shall be responsible for all reports and obligations respecting such employees, including, without limitation, social security tax, income tax withholding, unemployment compensation, worker's compensation, employee benefits and similar matters. Further, the Consultant has sole authority and responsibility to employ, discharge and otherwise control its employees. The Consultant has sole authority and responsibility as principal for its agents, employees and all others it hires to perform or assist in performing the Services, if any. **The Consultant is not entitled to worker's compensation benefits and the Consultant is obligated to pay federal and state income taxes on moneys earned pursuant to the Agreement.**

3. SUBCONTRACTORS. The Consultant is solely and fully responsible to the District for the performance of all work under the Agreement, whether performed by the Consultant or a subcontractor engaged by the Consultant. Use of any subcontractor by the Consultant shall be pre-approved in writing by the District. To obtain such approval, the Consultant shall submit the name of the subcontractor, together with resume(s) of training and experience in work of like character and magnitude as the work to be subcontracted, to the District. The Consultant agrees that each and every agreement of the Consultant with any subcontractor to perform work under the Agreement shall contain an indemnification provision

identical to the one contained herein holding the District harmless for the negligent or tortious acts of the subcontractor. The Consultant further agrees that any such subcontract shall be terminable not-for-cause and that, unless directed otherwise by the District, the Consultant shall immediately terminate all such subcontracts immediately upon termination of the Agreement. Prior to commencing any of the work, a subcontractor shall provide evidence of insurance coverage to the District as provided in Section 4. The Consultant further agrees that all such subcontracts shall provide that they may be terminated immediately without further cost upon termination of the Agreement.

4. CONSULTANT'S INSURANCE.

A. The Consultant shall acquire and maintain, during the entire term of the Agreement, including any extensions of the term, statutory worker's compensation insurance coverage, comprehensive general liability insurance coverage, and automobile liability insurance coverage in no less than the amounts set forth in Subsection 4.D. below. Automobile liability insurance shall be required of the Consultant if the Consultant owns any automobiles and the Consultant shall obtain such automobile liability insurance upon owning any automobiles in the future. The District and its directors, officers, employees and agents shall be named as an additional insured on the Consultant's comprehensive general liability insurance and automobile liability insurance (if applicable). The comprehensive general liability insurance shall include contractual liability insurance. Any policy of insurance obtained to comply with this Section shall provide that the District shall receive thirty (30) days written notice prior to the policy's cancellation, non-renewal or modification to any provisions of such policy affecting the insurance coverage requirements under the Agreement. All coverages provided pursuant to this Section shall be primary and any insurance maintained by the District shall be considered excess. The District shall have the right to verify or confirm, at any time, all coverages, information or representations contained herein. All insurance companies issuing policies hereunder must carry at least an A-10 rating from A.M. Best Company or obtain a written waiver of this requirement from the District.

B. Prior to commencing any work under the Agreement, the Consultant shall provide the District a certificate or certificates evidencing the policies required by this Section, as well as the amounts of coverage for the respective types of coverage. If the Consultant subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance, and automobile liability (if applicable) in amounts satisfactory to the District and the Consultant. If the coverage required under this Section expires during the term of the Agreement, the Consultant or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

C. If any policy obtained by the Consultant is a claims-made policy, the following conditions shall apply: the policy shall provide the Consultant the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. The Consultant agrees to purchase this extended reporting period. If the policy is a claims-made policy, the retroactive date of any renewal of such policy shall not be later than the date the Agreement is signed by the Parties. If the Consultant purchases a

subsequent claims-made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the Agreement is signed by the Parties.

D. The Consultant shall acquire and maintain during the entire term of the Agreement, statutory workers' compensation insurance coverage, comprehensive general liability insurance coverage, and automobile liability insurance coverage (if applicable) in the following amounts:

- i. Worker's Compensation Insurance in accordance with applicable law, including employers' liability.
- ii. Comprehensive general liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
 - a. premises operations;
 - b. personal injury liability without employment exclusion;
 - c. blanket contractual;
 - d. broad form property damages;
 - e. medical payments;
 - f. independent contractors coverage.
- iii. Commercial automobile liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each accident covering any auto.
- iv. **All coverages specified above shall waive any right of subrogation against the District and its directors, officers and employees; such waiver of subrogation shall apply solely to acts, actions, omissions or neglect of the Consultant, and in no way limits the right of subrogation for acts, actions, omissions or neglect of the District or others.** The policies shall state: "Permission is expressly granted to the insured to waive any right of subrogation against an individual, firm or corporation in accordance with the terms of the Agreement and related Addendum A provided such waiver is executed in writing prior to any occurrence giving rise to claims hereunder."

E. The Consultant's failure to purchase the required insurance shall not serve to release it from any obligations contained herein; nor shall the purchase of the required insurance serve to limit the Consultant's liability under any provision herein. The Consultant shall be responsible for the payment of any deductibles on issued policies

5. INDEMNIFICATION. The Consultant shall indemnify, defend and hold harmless the District and its directors, officers, contractors, employees and agents from and against all liability, claims, suits, losses, damages, costs and demands, including reasonable attorney's fees and defense costs, arising from the tortuous acts, criminal acts, negligent acts, willful misconduct, errors or omissions of the Consultant or its subcontractor in the performance of professional services under the Agreement. The Consultant is not obligated to indemnify the District for the District's own negligence. This indemnification obligation shall survive the expiration or termination of the Agreement.

Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the District's protection in the performance of the Agreement.

6. DISTRICT PAYMENTS ARE SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Consultant expressly understands and agrees that the District's obligations hereunder shall extend only to monies appropriated for the purposes of the Agreement by the District and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of the Agreement shall be construed or interpreted as a delegation of governmental powers by the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20, or Article XI, Sections 1, 2 or 6 of the Constitution of the State of Colorado. No provision of the Agreement shall be construed to pledge or to create a lien on any class or source of District funds, nor shall any provision of the Agreement restrict the future issuance of bonds or obligations payable from any class or source of District funds.

7. UNDOCUMENTED WORKERS.

A. Pursuant to the requirements of Section 8-17.5-102(1), C.R.S., the Consultant hereby certifies to the District that the Consultant shall not knowingly employ or contract with an illegal alien to perform work under the Agreement or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform under the Agreement. The Consultant represents, warrants and agrees that it has participated or has attempted to participate in the E-Verify Program (as defined in Section 8-17.5-101(3.7), C.R.S., as amended) in order to confirm the employment eligibility of all employees of the Consultant who are newly hired for employment in the United States.

B. In accordance with Section 8-17.5-102(2)(a), C.R.S., the Consultant shall not:

- (i) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or
- (ii) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or

contract with an illegal alien to perform work under the Agreement.

C. The Consultant represents and warrants that it has verified or attempted to verify through participation in the E-Verify Program the employment eligibility of all of its employees who are newly hired for employment in the United States, and if the Consultant is not accepted into the E-Verify Program prior to entering into the Agreement the Consultant shall apply to participate in the E-Verify Program every three (3) months until the Consultant is accepted or the Agreement has been completed, whichever occurs earlier. This provision shall be effective for so long as the E-Verify Program is in effect.

D. The Consultant shall not use E-Verify Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.

E. If the Consultant obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Consultant shall:

- (i) Notify the subcontractor and the District within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- (ii) Terminate the contract with the subcontractor if, within three (3) days of receiving the notice required pursuant to Subsection (i) above, the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

F. The Consultant shall comply with any and all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment, pursuant to applicable law.

G. If the Consultant violates any provision of the Agreement or §§ 8-17.5-101, *et seq.*, C.R.S., the District may terminate the Agreement immediately and the Consultant shall be liable to the District for actual and consequential damages of the District resulting from such termination, and the District shall report such violation by the Consultant to the Colorado Secretary of State, as required by law.

8. GOVERNMENTAL IMMUNITY. Nothing herein shall be construed as a waiver of the rights and privileges of the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

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