

Resolution #4

2018

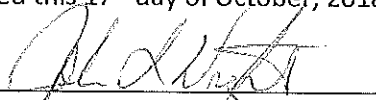
WHEREAS, the Terre Haute Park and Recreation Board is aware of the Parks and Recreation needs of the residents of Vigo County, Terre Haute, Indiana and

WHEREAS, the Board realizes the importance of sound planning in order to meet the needs of its own citizens.

NOW, THEREFORE, BE IT RESOLVED THAT THE TERRE HAUTE PARK AND RECREATION BOARD, by unanimous declaration, approves an agreement with HWC Engineering, Indianapolis, Indiana to provide services for the "2019-2023 (5) year Master Plan. SEE ATTACHMENT

Passed and signed this 17th day of October, 2018

Board President


John Wright

Board Secretary


Nancy Cummins

HWC ENGINEERING
135 N. Pennsylvania Street, Suite 2800
Indianapolis, IN 46204
(317) 347-3663
(317) 981-1298 (fax)

AGREEMENT TO PROVIDE SERVICES

This **AGREEMENT TO PROVIDE SERVICES** ("Agreement") is recognized as being established the _____ day of 17th October, 2018 (the "Effective Date"), by and between HWC Engineering, Inc., of Indianapolis, Indiana (hereinafter referred to as "**HWC**") and the Parks & Recreation Department for the City of Terre Haute, Indiana (hereinafter referred to as "**CLIENT**"), concerning the following:

The Project Name, Location, and Address are:

2019-2023 5-Year Parks and Recreation Master Plan Update
Terre Haute, Indiana

The CLIENT's Name and Address is:

Terre Haute Parks & Recreation Department
City of Terre Haute
1.1.10 Girl Scout Lane
Terre Haute, IN 47807

The Project's Designated CLIENT Representative and his/her contact information (including title, address, phone number, fax number, and e-mail address) are:

Eddie Bird
Park Superintendent
Terre Haute Parks & Recreation Department
City of Terre Haute
1.1.10 Girl Scout Lane
Terre Haute, IN 47807
Phone: 812-232-2727
Fax: 812-234-7636
eddie.bird@terrehaute.in.gov

The Project's designated HWC representative and his/her contact information (including title, address, phone number, fax number and email address):

Cory J. Whitesell, P.E.
Director - Planning Division
HWC Engineering
135 N. Pennsylvania Street., Suite 2800
Indianapolis, IN 46204
Phone 317-347-3663 extension 206
cwhitesell@hwcengineering.com

The applicable HWC Project number: 2018-214-S

WITNESSETH

WHEREAS, the **CLIENT** desires to contract for certain professional services in connection with the following project (hereinafter the "Project"):

2019-2023 5-Year Parks and Recreation Master Plan Update

WHEREAS, **HWC** has expressed a willingness to provide the professional services for the Project; and

WHEREAS, the parties hereto agree that **HWC** shall provide the services and documents hereinbefore and hereinafter described in relation to the Project;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION I: SERVICES BY HWC

The services to be performed by **HWC** under this Agreement are set out in Appendix "A", attached to this Agreement, and made an integral part hereof (hereinafter the "Services").

SECTION II: INFORMATION AND SERVICES TO BE FURNISHED BY THE CLIENT

The information and services to be furnished by the **CLIENT** are set out in Appendix "B", attached to this Agreement and made an integral part hereof.

SECTION III: NOTICE TO PROCEED AND SCHEDULE

HWC shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the **CLIENT**, and shall deliver the work to the **CLIENT** in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. **HWC** shall not begin work prior to the date provided in the written notice to proceed.

HWC acknowledges the importance to the **CLIENT** of the project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule attached. The **CLIENT** understands, however, that **HWC's** performance must be governed by sound professional practices.

If in this Agreement, specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of **HWC**, for reasons including, but not limited to, delay of state or municipal agencies in approvals or other governmental decisions, or delay in site or land acquisition, the rates and amounts of compensation provided herein shall be subject to equitable adjustment.

SECTION IV: COMPENSATION

HWC shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

SECTION V: GENERAL PROVISIONS

1. Consultants and Subcontracting

HWC shall, in its sole discretion and without approval of the CLIENT, have the right to employ such subconsultants and consultants (collectively hereinafter "Subconsultants") as HWC deems necessary to assist in the performance of furnishing of the Services. HWC Shall not be required to employ any Subconsultants unacceptable to HWC.

2. Use and Ownership

All reports, tables, figures, drawings, specifications, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents (hereinafter "Documents") prepared by HWC as instruments of service shall remain the property of HWC. The CLIENT shall be entitled to copies or reproducible sets of any of the Documents for information and reference in connection with use on the Project by CLIENT.

HWC will retain all pertinent records relating to the services performed for a period of five (5) years following performance of work, during which period the records will be made available to the CLIENT at all reasonable times for inspection or copying.

HWC agrees that the CLIENT is not required to use any plan, report, drawing, specifications, advice, map, document or study prepared by HWC and HWC waives all right of redress against the CLIENT if the CLIENT does not utilize same. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or any other project. Any such reuse or modification without written verification or adaptation by HWC, as appropriate for the specific purpose intended, shall be at CLIENT's sole risk and without liability or legal exposure to HWC. CLIENT shall indemnify and hold harmless HWC from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting there from.

CLIENT hereby acknowledges that due to the status of the Documents as instruments of professional service and the value associated therewith such designation, that HWC is entitled to enforce the prohibition against misuse of the Documents by CLIENT by obtaining an injunction to enjoin and restrain the unauthorized use of the Documents. Additionally, the improper utilization of the Documents hereunder shall be considered to be a breach of this Agreement and entitle HWC to all rights and remedies provided herein.

3. Compliance with State and Other Laws

HWC specifically agrees that in performance of the services herein enumerated by HWC or by Subconsultants or anyone acting on behalf of either, that each will comply with all state, federal, and local statutes, ordinances and regulations in effect as of the effective date of this Agreement (the "Laws and Regulations"). Changes to these laws and regulations after the effective date of this Agreement may be the basis for modifications to CLIENT's responsibilities as provided in Appendix B or to HWC's Services (as provided in Appendix A), times of performance (as provided in Appendix C), or compensation (as provided in Appendix D).

4. Professional Responsibility

HWC will exercise reasonable skill, care, and diligence in the performance of services and will carry out all responsibilities in accordance with customarily accepted professional engineering

practices. Failure by the CLIENT to report any defect or suspected defect to **HWC** within one (1) year from the completion of **HWC's** services for the Project shall relieve HWC of the obligation to cure the defect or suspected defect or any costs associated with the efforts to cure the defect or suspected defect.

Neither the professional activities of **HWC**, nor the presence of **HWC** or its employees and sub-consultants at a construction/project site, shall relieve the construction professional or company contracted (hereinafter "**CONTRACTOR**") with the **CLIENT** to provide construction services of its obligations, duties and responsibilities, including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. **HWC** and its personnel have no authority to exercise any control over the **CONTRACTOR** or its employees in connection with their work or any health and safety programs or procedures. The **CLIENT** agrees that the **CONTRACTOR** shall be solely responsible for job site safety and warrants that this intent shall be carried out in the **CLIENT's** contract with the **CONTRACTOR**. The **CLIENT** also agrees that the **CLIENT**, **HWC** and **HWC's** sub-consultants shall be indemnified by the **CONTRACTOR** and shall be made additional insureds under the **CONTRACTOR's** policies of general liability insurance.

HWC shall not be required to sign any documents, no matter by whom requested, that would result in **HWC** having to certify, guarantee or warrant the existence of conditions whose existence **HWC** cannot ascertain. The **CLIENT** also agrees not to make resolution of any dispute with **HWC** or payment of any amount due to **HWC** in any way contingent upon **HWC's** signing any such certification.

HWC shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the **CLIENT** or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained separately by **CLIENT**. **HWC** shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by **HWC**) in the designs, drawings, specifications and other services furnished by the **CLIENT**, or other consultants retained by the **CLIENT**. Additionally, **HWC** shall not be responsible for the use of the Documents by **CLIENT**, or consultants retained by the **CLIENT**, for any purposes other than in conjunction with the Project.

HWC's opinions of probable construction costs provided under this Agreement are to be made on the basis of **HWC's** experience and qualifications and represent **HWC's** best judgment as an experienced and qualified professional within the industry. However, since **HWC** has no control over the cost of labor (including but not limited to wage scales for public works projects), materials (or changes in materials requested by **CLIENT**), equipment or services furnished by others, changes in applicable laws (including, but not limited to, building codes, flood plain designation, etc.) or over the **CONTRACTOR's** methods of determining prices or over competitive bidding or market conditions, **HWC** cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable construction costs prepared by **HWC**.

5. Status of Claims

HWC shall be responsible for keeping the **CLIENT** currently advised as to the status of any known claims made for damages against **HWC** resulting from services performed under this

Agreement. **HWC** shall send notice of claims related to work under this Agreement to the **CLIENT**.

6. Insurance

HWC shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

- General Liability (including automobile) with a combined single limit of \$1,000,000.00. The **CLIENT** shall be named as an Additional Insured. **HWC's** insurance shall be written on a "primary" basis and the **CLIENT's** insurance program shall be in excess of all of **HWC's** available coverage.
- Worker's Compensation at single limit of \$1,000,000.00. Worker's Compensation shall include a Waiver of Subrogation endorsement in favor of **CLIENT**.
- Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of \$2,000,000.00
- **HWC** shall provide to **CLIENT** Certificates of Insurance indicating the aforesaid coverage upon request of the **CLIENT**.
- **HWC** shall name **CLIENT** as additional insured on General Liability and Auto Liability policy.

HWC will require its Subconsultants to maintain Commercial General Liability, Auto Liability, Workers Compensation and Professional Liability coverages equal to or greater than maintained by **HWC**. Subconsultants shall also name **HWC** and **CLIENT** as additional insureds on General Liability and Auto Liability policy.

CLIENT shall procure and maintain insurance as follows:

- Commercial General Liability Insurance, with a per occurrence limit of not less than \$2,000,000.00

CLIENT and **HWC** shall each deliver to the other certificates of insurance evidencing the coverage indicated in this Agreement. Such certificates shall be furnished prior to commencement of **HWC's** services and at renewals thereafter during the life of the Agreement.

7. Changes in Work

In the event that either the **CLIENT** or **HWC** determine that a material change in scope, character or complexity of the work is needed after the work has progressed as directed by the **CLIENT**, both parties in the exercise of their reasonable and professional judgment shall negotiate the changes and **HWC** shall not commence the additional work or the change of the scope of the work until a supplemental agreement is executed and **HWC** is authorized in writing by the **CLIENT** to proceed.

8. Delays and Extensions

HWC agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Any such delays shall be compensated for by an extension of time for such period as may be reasonably determined by the **CLIENT**, subject to **HWC's** approval. However, it being understood, that the permitting of **HWC** to proceed to complete any services, or any part of

them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the **CLIENT** of any of its rights herein.

9. Abandonment

Services may be terminated by the **CLIENT** and **HWC** by thirty (30) days' notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party so long as such nonperformance has not been caused by delays outside of the control of **HWC**. If so abandoned, **HWC** shall deliver to the **CLIENT** copies of all data, reports, drawings, specifications and estimates completed or partially completed along with a summary of the progress of the work completed within twenty (20) days of the abandonment. In the event of the failure by **HWC** to make such delivery upon demand, then and in that event **HWC** shall pay to the **CLIENT** any damages sustained by reason thereof. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by **HWC** to the date of the abandonment for all services to be paid for on a lump sum basis. **HWC** shall be compensated for services properly rendered prior to the effective date of abandonment on all services to be paid on a cost basis or a cost plus fixed fee basis. The payment as made to **HWC** shall be paid as the final payment in **CLIENT's** full settlement and release for the services hereunder unless otherwise provided hereunder.

10. Non-Discrimination

Pursuant to Indiana and federal law, **HWC** and **HWC's** Subconsultants, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, **age, gender, sexual orientation, gender identity, physical or mental disability**, national origin, religion, **familial status, limited English proficiency** or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

11. Employment Eligibility Verification

HWC affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

HWC shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in I.C. 22-5-1.7-3. **HWC** is not required to participate should the E-Verify program cease to exist.

HWC shall require its Subconsultants, who perform work under this Contract, to certify to **HWC** that the Subconsultant does not knowingly employ or contract with an unauthorized alien and that the Subconsultant has enrolled and is participating in the E-Verify program. **HWC** agrees to maintain this certification throughout the duration of the term of a contract with a Subconsultant.

The **CLIENT** may terminate for default if **HWC** fails to cure a breach of this provision no later than thirty (30) days after being notified by the **CLIENT**.

12. Successor and Assigns

The **CLIENT** and **HWC** each binds themselves and 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; except as above, neither the **CLIENT** and **HWC** shall assign, sublet or transfer their interest in the Agreement without the written consent of the other.

13. Supplements

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

14. Governing Laws

This Agreement and all the terms and provisions shall be interpreted and construed according to the laws of the State of Indiana, notwithstanding any state's choice of law rules to the contrary. Should any clause, paragraph, or other part of this Agreement be held or declared to be void or illegal, for any reason, by any court having competent jurisdiction, all other causes, paragraphs or part of this Agreement, shall nevertheless remain in full force and effect. Any and all actions to be litigated under this matter shall be initiated in Marion County, Indiana.

This Agreement contains the entire understanding between the parties and no modification or alteration of this Agreement shall be binding unless endorsed in writing by the parties thereto.

This Agreement shall not be binding until executed by all parties.

15. No Partnership

This Agreement will not constitute, create, give rise to or otherwise recognize a joint venture, partnership or formal business organization of any kind between the parties, and the rights and obligations of the parties shall be only those expressly stated under this Agreement. Neither party shall represent itself as an employee or subcontractor of the other, nor is this Agreement or any related documents intended to be construed so as to make either party an employee or subcontractor of the other. Except as otherwise provided in this Agreement, neither party shall have the ability to bind the other to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. All expenses incurred by the parties hereto are their respective sole responsibility, unless otherwise provided for in this Agreement.

16. Rights and Benefits

HWC's services will be performed solely for the benefit of the **CLIENT** and not for the benefit of any other persons or entities.

17. Disputes

All claims or disputes of **HWC** and the **CLIENT** arising out of or relating to the Agreement, or the breach thereof after notice and a reasonable opportunity to cure, shall be first submitted to non-binding mediation. If a claim or dispute is not resolved by mediation, the party making the claim or alleging a dispute shall have the right to institute any legal or equitable proceedings in a court located in Marion County, Indiana.

18. Indemnities

HWC and the **CLIENT** each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorney fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions.

In addition to the indemnity of this Agreement, and to the fullest extent permitted by law, **CLIENT** shall indemnify and hold harmless **HWC**, **HWC's** Subconsultants and the officers, directors, partners, employees of **HWC**, from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the presence of asbestos, toxic materials, or any other hazardous, toxic or dangerous environmental condition, on or about the Project site (the "Site"), whether known or unknown to **CLIENT**, provided that nothing in this Article shall obligate **CLIENT** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

The **CLIENT** agrees to extend any and all liability limitations and indemnifications for performance of services under this Agreement to, in and including, but not limited to **HWC's** officers and employees, their heirs and assigns, and **HWC's** Subconsultant's their heirs and assigns.

19. Engaging in activities with Iran

By signing this Agreement, **HWC** certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5-13.

20. Complete Agreement

This Agreement, and all other referenced exhibits which form a part of this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be deemed to supersede all prior and contemporaneous agreements, representations, and understandings, whether written or oral, and the same shall be deemed to have been merged into this Agreement

21. Notice

Any notice contemplated herein or required or permitted to be given hereunder shall be in writing and shall be deemed to be given when delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested to the parties at the addresses set forth in the preamble of this Agreement, or to such other address as either party may have last specified by written notice to the other.

APPENDIX "A"

SERVICES BY HWC

General

In general, the intent of this plan is to update the inventories and action items in the Terre Haute Parks and Recreation Department's (CLIENT) 2014-2018 5-Year Parks and Recreation Master Plan as prepared by HWC Engineering. This is intended to be a minor update and editing of the previous plan.

The CLIENT engaged Purdue University to complete public participation efforts related to this plan. No additional public participation or stakeholder coordination will be completed by HWC or the CLIENT as part of this plan update.

A detailed scope of services to be provided by HWC follows:

Planning Phase (by HWC)

1. HWC will review the public participation report as prepared by Purdue University to identify public input received related to this plan.
2. HWC will conduct site visits to major parks with a CLIENT representative to identify changes to parks that have occurred since the last plan was completed. HWC will update plan inventories and the status of action items. These visits will be scheduled to occur over one business day. Smaller parks that have not been modified since the last plan will not be visited. New goals and objectives for each park will be identified during the course of these meetings.
3. HWC will conduct a half-day planning meeting with parks staff, city representatives and park board representatives (not to exceed 10 attendees). During this meeting, the team will review public input, parks department goals, and current conditions. Final goals, objectives and priorities for this plan will be established.
4. HWC will prepare a draft update to the plan. Edits to each chapter will be as follows:
 - Introduction: Minor updates only to reflect the current plan and purpose of the update.
 - The Community: Minor updates only to reflect changes since the last plan was prepared, and to reflect current demographic information.
 - The Parks Department: This chapter will be updated to reflect current operating structures. This is expected to be minor edits only.
 - The Parks System: Park Facilities tables and maps will be updated. HWC will prepare a summary of public input and recommendations from the Purdue University public participation work. Conceptual park plans will be removed (no additional conceptual park plans will be developed). Vision, initiatives, goals/objectives will be significantly updated from the previous plan where appropriate. While not a complete rewrite of this chapter, it will receive significant edits to public input and goals.
 - Park inventories: Photos and aerials will be updated where appropriate. The inventory will be revised to reflect changes since the previous plan. The priority issues and action items will be updated based on input. Concept plans will not be edited.
 - Action Plan: Updated tables will be developed.

2019-2023 5-Year Parks and Recreation Master Plan Update
Terre Haute, Indiana
Appendix "A"

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE CLIENT

If requested by **HWC**, the **CLIENT** shall, within a reasonable time, so as not to delay the services of **HWC**:

1. Provide full information as to **HWC's** requirements for the Project.
2. Assist **HWC** by placing at **HWC's** disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
3. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by **HWC**, obtain advice of an attorney, insurance counselor, and other Engineers as **CLIENT** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time or as provided in an agreed schedule so as not to delay the services of **HWC**.
4. Give prompt written notice to **HWC** whenever **CLIENT** observes or otherwise becomes aware of any defect in the Project.
5. Furnish all existing approvals or permits from all governmental authorities having jurisdiction over the Project. **HWC** will assist the **CLIENT** in identifying and procuring any additional permits associated with this Project or as identified in this Agreement or "Services by the HWC/the Engineer".
6. Arrange for access to and make all provisions for **HWC** to enter upon public and private property as required for **HWC** to perform services under this Agreement.
7. Obtain necessary easements and right-of-way for construction of the Project, including easement and right-of-way descriptions, property surveys and boundary surveys.
8. Furnish to **HWC**, as requested by **HWC** or as required by the Contract Documents, data prepared by or services of others, including exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site.

APPENDIX "C"

NOTICE TO PROCEED AND SCHEDULE

HWC acknowledges the importance to the CLIENT of the project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with the schedule below:

Activity	Schedule
Information Gathering	October 2018
Public Participation	October - November 2018
Analysis	October - November 2018
Recommendation and Draft Plan	December 2018 - January 2019
Plan Review and Adoption	February - April 2019

HWC Engineering
2018 Hourly Billing Rates

<u>POSITION</u>	<u>HOURLY RATE</u>
Principal	\$201.00
Senior Project Manager	\$196.00
Project Manager	\$155.00
Project Engineer	\$130.00
Engineer Intern	\$110.00
Landscape Architect I	\$135.00
Landscape Architect II	\$110.00
Planner	\$125.00
Designer/Technician	\$100.00
Clerical Support	\$75.00
Construction Inspection Manager	\$115.00
Construction Inspector I	\$105.00
Construction Inspector II	\$95.00
Project Surveyor	\$120.00
Survey Crew Leader	\$100.00
Survey Crew Member I	\$80.00
Survey Crew Member II	\$65.00
Intern	\$56.00

REIMBURSABLE EXPENSES

- Direct Travel Expense - including mileage (the current rate allowed by the IRS), air fare, car rental, lodging, meals, large blueprint and copying runs, etc.
- Large format black and white prints at \$.375 per square foot.
- Plots at \$2.00 per square foot.
- Black and white copies at \$.10 per sheet.
- Color copies at \$.50 per sheet
- CD's at \$25.00 each.
- Actual cost of long distance telephone calls, expense charges, photographs and postage.
- Expenses will be billed at cost plus a 10% administrative fee.
- Hours worked in excess of 8 hours per day or 40 hours per week will be billed at an overtime rate of 1.5 times the rates listed for non-exempt employees.