

# Carter & Burgess

## PROFESSIONAL SERVICES AGREEMENT

**PROJECT NAME:** Additional Services Detention Pond Design/Analysis St. Bernards/Marshall Estates area  
**PROJECT NUMBER:** 100358.373  
**CLIENT:** City of Jonesboro, Arkansas  
**ADDRESS:** P. O. Box 1845, Jonesboro, AR 72403

hereby requests and authorizes Carter & Burgess, Inc. ("C&B") to perform the following Services:

**SCOPE OF SERVICES:** Detention analysis for changes to ASU's proposed detention pond to accommodate runoff from Marshall Estates conveyed in a storm sewer system. The drainage analysis assumes that Carter Burgess does not need to provide any surveying services. Analysis includes site investigation, data collection, current conditions analysis, and how to correct situation. Carter Burgess assumes that design data from Associated Engineering will be provided to modify runoff time of concentration values. This analysis is for enlargement of the currently designed detention pond that is part of ASU's Westside Overpass (Caraway Road relocation) project and also determining if creating a second detention pond connected by pipes is a viable alternative. The results will be discussed with the City, and the final alternative will be incorporated into ASU Westside Overpass (Caraway Road relocation) plans.

**COMPENSATION to be on a basis of:**

A Lump Sum amount of \$ 5,003. This Lump Sum includes all charges for professional services, which will be provided by C&B and all outside sources and an estimate of expenses. Should actual expenses exceed the Lump Sum amount; C&B will submit a statement within thirty (30) days of completion of Services for such expenses. Additional Services authorized in writing or otherwise confirmed by Client will be billed in addition to the lump sum amount as provided in Paragraph 7 on the other side of this authorization.

The parties agree to the Provisions stated on the other side of this authorization.

Accepted for **CARTER & BURGESS, INC.**

By:

Name:

James E. Arbuckle, P.E..

Title:

Vice President

Date:

12/7/05

## PROVISIONS

1. **AUTHORIZATION TO PROCEED.** Signing this Agreement shall be construed as authorization by CLIENT for C&B to proceed with the Services, unless otherwise provided for in this Agreement.

2. **LABOR COSTS.** In the event C&B's compensation is calculated by reference to C&B's Labor Costs, Labor Costs shall be the amount calculated by the number of hours actually worked by each of C&B's employees on CLIENT's Project, multiplied by an amount charged for each such employee's work, which is calculated by dividing each such employee's annualized, non-overtime compensation (whether salary or paid to such employee at an hourly rate, as the case may be) by 2,080 hours per year.

3. **DIRECT EXPENSES.** C&B's Direct Expenses shall be those costs incurred on or directly for the CLIENT's Project, including but not limited to necessary transportation costs including mileage at C&B's current rate when its automobiles are used, meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these expenses shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by C&B.

4. **OUTSIDE SERVICES.** When technical or professional services are furnished by an outside source, when approved by CLIENT, an additional amount shall be added to the cost of these services for C&B's administrative costs.

5. **COST ESTIMATES.** Any cost estimates provided by C&B will be on a basis of experience and judgment. Since C&B has no control over market conditions or bidding procedures, C&B does not warrant that bids or ultimate construction costs will not vary from these cost estimates.

6. **PROFESSIONAL STANDARDS.** C&B shall be responsible, to the level of competency presently maintained by other practicing professionals in the same type of work in CLIENT's community, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Agreement. C&B makes no warranty, expressed or implied.

7. **ADDITIONAL SERVICES.** Services in addition to those specified in Scope of Services will be provided by C&B if authorized in writing or otherwise confirmed by CLIENT. Additional services will be paid for by CLIENT as indicated in any Letter of Proposal, Task Authorization, or such other document as deemed appropriate by CLIENT and C&B. In the absence of an express agreement about compensation, C&B shall be entitled to an equitable adjustment to its compensation for performing such additional services.

8. **SALES TAX.** In addition to any other sums or amounts required to be paid by CLIENT to C&B pursuant to this Agreement, CLIENT must also pay to C&B the amount of any applicable sales, use, excise or other tax with respect thereto (other than any general income tax payable by C&B with respect thereto) as the same may be levied, imposed or assessed by any federal, state, county or municipal government entity or agency.

9. **LIMITATION OF LIABILITY.** C&B's liability to the CLIENT for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this Agreement.

10. **DISPUTE RESOLUTION.** All disputes arising out of this Agreement shall be mediated by the parties within a reasonable time after the first request for mediation, prior to either party filing a suit in a court of law, provided, however, that neither party shall be obligated to mediate prior to requesting injunctive relief.

11. **ASSIGNMENT TO RELATED ENTITY.** Notwithstanding anything in this Agreement to the contrary, in the event C&B is not qualified and licensed in the relevant jurisdiction to provide any Services required hereunder, C&B may, without the consent of any other party, assign all or any part of its obligation to provide such Services to an entity related to C&B which is qualified and licensed to provide such Services in the jurisdiction involved and which is contractually bound to C&B to provide such Services.

12. **PAYMENT TO C&B / INTEREST ON PAST-DUE AMOUNTS.** Monthly invoices will be issued by C&B for all Services performed under the terms of this Agreement. Invoices are due and payable net 15 days. CLIENT agrees to pay interest at the rate of 1½% per month on all past-due amounts, unless not permitted by law. Any interest charged or collected in excess of the highest legal rate will be applied to the principal amount owing to C&B, and if such interest exceeds the principal balance of CLIENT's indebtedness to C&B, will be returned to CLIENT. It is the intent of C&B and CLIENT to abide by all applicable laws regulating the maximum amount of interest that may be charged. CLIENT

shall also be responsible for all costs associated with collecting any past-due amounts. To the greatest extent allowed by applicable law, CLIENT and C&B agree that in the event CLIENT and C&B enter into any compromise or settlement calling for the payment of past due principal and accrued and unpaid interest on any past-due invoice, C&B may charge and CLIENT agrees to pay interest on such combined past due principal and accrued and unpaid interest amount (the "New Principal Balance") at the rate of 1½% per month or at the highest rate allowed by law, subject, as provided herein, to C&B's agreement to credit excess interest or return same to CLIENT after the New Principal Balance is paid. All payment obligations are performable in Tarrant County, Texas, and CLIENT agrees to submit to the jurisdiction of the courts of the State of Texas in Tarrant County, Texas for enforcement of all obligations created by this Agreement.

13. **C&B'S RIGHT TO SUSPEND SERVICES.** If CLIENT fails to pay any amount due C&B under this Agreement, C&B may, in addition to any other rights afforded under this Agreement or at law, suspend Services. Prior to suspending Services, C&B will provide CLIENT with written notice that C&B will suspend Services unless said failure to pay is cured within 7 days from CLIENT'S receipt of C&B's notice. If CLIENT does not cure the problem within such 7-day period, C&B may suspend Services under this Agreement. In the event of a suspension of Services, (a) C&B shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of Services, (b) any periods for completion of work shall automatically be extended by the period of such suspension, and (c) before resuming Services, C&B shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Services. C&B's compensation for the remaining Services and the time schedules shall be equitably adjusted. If the Project is suspended for more than 30 consecutive days, (x) C&B shall be compensated for Services performed prior to notice of such suspension, (y) when the Project is resumed, C&B shall be compensated for expenses incurred as a result of the interruption and resumption of C&B's Services, and (z) C&B's compensation for the remaining Services and the time schedules shall be equitably adjusted. To the extent CLIENT'S failure to pay is related to a dispute between the parties, the dispute will be resolved in accordance with Article 10.

14. **TERMINATION FOR NON-PAYMENT OF FEES.** C&B may terminate this Agreement by giving written notice if any C&B invoice remains unpaid for more than 30 days. C&B's right to terminate this Agreement shall not be waived by C&B's continued performance during any period of investigation by C&B to determine the reasons for CLIENT'S nonpayment.

15. **TERMINATION.** Either CLIENT or C&B may terminate this Agreement with or without cause by giving 7 days' written notice to the other party. In such event CLIENT shall forthwith pay C&B in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

16. **LEGAL EXPENSES.** In the event legal action is brought by C&B to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, CLIENT shall pay C&B reasonable amounts for fees, costs and expenses as may be set by the court.

17. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired thereby.

18. **ELECTRONIC MEDIA.** (a) As a component of the services provided under this Agreement, C&B may deliver electronic copies of certain documents or data (the "Electronic Files") in addition to printed copies (the "Hard Copies") for the convenience of CLIENT. CLIENT and its consultants, contractors and subcontractors may only rely on the Hard Copies furnished by C&B to CLIENT. If there is any discrepancy between any Electronic File and the corresponding Hard Copy, the Hard Copy controls. (b) CLIENT acknowledges that Electronic Files can be altered or modified without C&B's authorization, can become corrupted and that errors can occur in the transmission of such Electronic Files. CLIENT agrees that it will institute procedures to preserve the integrity of the Electronic Files received from C&B until acceptance. CLIENT further agrees that it will review the Electronic Files immediately upon receipt and conduct acceptance tests within thirty (30) days, after which period CLIENT shall be deemed to have accepted the Electronic Files as received. C&B will undertake commercially reasonable efforts to correct any errors in the Electronic Files detected within the 30-day acceptance period. C&B shall not be responsible to maintain the Electronic Files after acceptance by CLIENT. (c) C&B does not warrant or represent that the Electronic Files will be compatible with or useable or readable by systems used by CLIENT or its consultants, contractors and subcontractors. C&B is not responsible for any problems in the interaction of the Electronic Files with other software used by CLIENT or its consultants, contractors and subcontractors.