

TERMS AND CONDITIONS

This Agreement between The City of Smyrna ("Client") and **Pond & Company** ("POND"), a Georgia corporation with its corporate headquarters located at 3500 Parkway Lane, Suite 500, Peachtree Corners, GA 30092, is effective as of October 26, 2022. The parties agree as follows:

1.0 Services:

POND agrees to perform for Client the professional services ("Services") described in the POND proposal dated

October 11, 2022 ("Proposal"), attached and incorporated herein. Because of the uncertainties inherent in the Services contemplated, time schedules are only estimated schedules and are subject to revision unless otherwise specifically described in the Proposal. As full consideration for the performance of Services, Client shall pay to POND the compensation provided for in the Proposal.

2.0 Integration:

These Terms and Conditions, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties. If any term or provision hereunder, or any portion hereof, is held to be invalid or unenforceable, it shall not affect any other term or provision hereunder or any part thereof, unless the invalidity or unenforceability of such term(s) or provisions(s) tends to render the Agreement commercially useless to either party, in which case the entire Agreement shall become null and void.

3.0 Access to Site:

Unless otherwise stated, POND will have reasonable access to the site for activities necessary for the performance of the services. If reasonable access is not provided and consequently POND is denied or delayed in performing our services, the associated cost may be viewed as an additional expense.

4.0 Billings/Payment:

Invoices for POND services shall be submitted, at POND'S option, either upon completion of such services, on a project basis or on a monthly basis and are due when rendered. Client shall promptly review all invoices and shall notify POND in writing within ten (10) days of date of invoice, provide reasons for the objection, and promptly pay the undisputed amount. Invoices shall be considered "Past Due" if not paid within 30 days after receipt of invoice for services rendered. If the invoice is not paid within 30 days, POND may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, stop work on the performance of the service. Unpaid accounts shall be subject to a monthly service charge of 1% per month on the unpaid balance at the sole election of POND. In the event any portion or all of an account remains unpaid 90 days after proper billing, the Client shall pay all costs of collection, including reasonable court costs and attorney's fees. Client shall remit payment to POND's corporate headquarters address above.

5.0 Reimbursable Expenses:

Reimbursable expenses will be billed at a multiplier of 1.15 times the cost incurred.

6.0 Additional Services:

Additional services include increase or change in scope of project, major revisions when such revisions are inconsistent with written approvals or instructions previously given, services after award of contract in evaluation of substitutions proposed by the construction contractor, correction of discrepancies between copies of the Contract Documents and the electronic media after the 30-day acceptance period and any other services that are not included within the Proposal. POND will only perform additional services when authorized in writing by the Client or Client's representative.

7.0 Client Furnished Services:

Any services provided by the Client for POND shall be deemed reliable, and POND shall be entitled to rely on the accuracy and completeness of any services and information furnished.

8.0 Indemnification:

The Client shall indemnify and hold harmless POND and all of its personnel from and against any claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the negligent performance of the services, provided that any such claim, damage, loss or expense is caused by the negligent act, omission, and/or strict

Revised 4/23/2019

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SCANNED

BY: _____ Date: _____

APPROVED

Per the City of Smyrna

Mayor and Council

Official Meeting Minutes

Date: _____

liability of the Client, anyone directly employed by the Client (except POND), or anyone for whose acts any of them may be liable.

9.0 Risk Allocation:

In recognition of the relative risks, rewards and benefits of the project to both the Client and POND, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by the law, POND's total aggregate liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed total fee. Such causes include, but are not limited to, POND negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

10.0 Dispute Resolution:

Any claims, counterclaims, or disputes between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by negotiation, mediation or litigation. The parties shall first endeavor to settle the dispute through direct discussions or negotiations. If the parties do not resolve the dispute or claim within thirty (30) days of the first notice thereof, either party may request mediation, which shall take place within thirty (30) days of the date the request is made. If both parties do not agree to mediation within ten (10) days of said request, or if the mediation does not result in a resolution of the dispute, then either party may proceed with litigation. No written or oral representation during any settlement negotiations or mediation shall be deemed as party admissions.

Any litigation arising out of this Agreement or the breach thereof must be filed in the state courts of Cobb County, Georgia, which shall be the sole and exclusive venue for all such litigation. The parties to this Agreement consent to jurisdiction in Cobb County, Georgia, and waive any objection thereto.

11.0 Standard of Care:

POND shall perform Services for Client with a standard of care ordinarily exercised by other firms providing similar services in accordance with accepted and sound professional practices, and conforms to applicable laws, codes and regulations.

12.0 Exchange of Electronic Media:

When exchange of data by electronic media is required by this agreement, the following shall apply:

12.1 Client to POND

The Client shall deliver to POND electronic files suitable for use in the format, specification, media and hardware platform (production system) agreed upon between the parties. POND shall review the files within a reasonable time period and determine whether electronic files are suitable for POND's use on the project. If the electronic files are unsuitable for use, POND shall notify the Client of the deficiencies. The Client shall make the required corrections and return the electronic files to POND.

12.2 POND to Client or Third Parties

POND shall deliver to the Client electronic files in the format agreed upon between the parties. These files are compatible only with the software and version agreed upon and may not be compatible with future versions of the software. The Client shall review the electronic files received from POND and notify POND of any discrepancies within a reasonable time period, but no longer than 60 days. POND shall make the required corrections and return the electronic files to Client.

POND agrees that it is responsible for the accuracy of the original sealed documents. If at any time there exists a difference between the submitted electronic files and the original sealed documents, the original sealed documents will govern as the official delivered contract documents.

POND will not release electronic files to third parties without a written authorization of the Client.

13.0 Termination of Services:

This Agreement may be terminated by written notice by either the Client or POND, should the other fail to perform its obligations hereunder or for convenience. In the event of termination, the Client shall pay POND for all services appropriately and completely rendered to the date of termination and all associated reasonable reimbursable expenses.

14.0 Ownership of Documents:

All documents, including electronic media, produced by POND under this Agreement shall remain the property of POND and may not be used by the Client for any reason without the written consent of POND; such written consent not to be

unreasonably withheld, conditioned or delayed. Any unauthorized use or distribution shall be at Client's and Recipient's sole risk and without liability to POND. Client further agrees that documents produced by POND pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without POND's written approval; such written approval not to be unreasonably withheld, conditioned or delayed. The Client will indemnify, defend, and hold

harmless POND for any and all claims, counterclaims, losses, costs, damages, awards or judgments arising from the unauthorized use of the documents.

If Client terminates this Agreement and POND authorizes the use of incomplete documents for Client's future use, POND shall not be liable for any errors or omissions and Client agrees their use of the incomplete documents is at their sole risk.

15.0 Force Majeure:

POND is not responsible for damages and delays caused by factors beyond POND's reasonable control, including but not limited to damages and delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of POND's services or work product promptly, or damages and delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond POND's reasonable control occur, the Client agrees POND is not responsible for damages, nor shall POND be deemed to be in default of this Agreement.

16.0 Discovery of Unanticipated Hazardous Materials:

Hazardous materials may exist where there is no reason to believe they could or should be present. POND and the Client agree that the discovery of unanticipated hazardous materials may constitute a changed condition mandating a renegotiation of the scope of work or termination of services at the election of either party. POND and the Client also agree that the discovery of unanticipated hazardous materials may make it necessary for POND to take immediate measures to protect human health and safety, and/or the environment. POND agrees to notify the Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The Client encourages POND to take any and all prudent "first aid" measures that in POND's opinion are justified to preserve and protect the health and safety of POND's personnel and the public, and/or the environment, and the Client agrees to compensate POND for reasonable additional cost of such work. The Client waives any claim against POND, and agrees to indemnify, defend and hold POND harmless from any claim or liability for injury or loss arising from POND's encountering unanticipated hazardous materials. The Client also agrees to compensate POND for any time reasonably spent and expenses incurred by POND in defense of any such claim, with such compensation to be based upon POND's prevailing fee schedule and expense reimbursement policy. The Client is fully responsible for and assumes all risks associated with such conditions.

17.0 Site Operations:

POND field personnel will avoid hazards and potentially dangerous exposure to and contact with utilities which are visible to them at the site. The Client recognizes that POND's personnel may not identify all subsurface utility lines and manmade objects, and that the information upon which POND relies may contain errors, may be incomplete, or insufficient. POND is not responsible for any reasonably unforeseeable damage or loss due to undisclosed or unknown surface or subsurface conditions, owned by Client or third parties. Evaluations of existing buildings require that certain assumptions be made regarding existing conditions, many of which are not able to be reviewed by reasonable visual observation. These assumptions cannot be verified without substantial cost or demolition. Where the detailed investigation of such a condition is not authorized, POND shall not be responsible for the condition of the existing structure and utilities. The Client understands that actual field conditions may subsequently be found to vary from design assumptions which in turn may alter or increase the scope of the design and/or construction services.

18.0 Construction Activities:

Unless specifically stated otherwise, the Client and his contractor(s) are fully and solely liable for all means and methods of construction, temporary bracing and shoring, and construction site safety.

19.0 Consequential Damages:

Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

20.0 Governing Law:

This Agreement shall be deemed to be executed in Cobb County, Georgia and shall be governed by the laws in the State of Georgia. It is agreed that all actions related to this Agreement shall be submitted to the jurisdiction of the state or federal courts in the State of Georgia and that the venues for same shall be located in Cobb County, Georgia.

By signing in the space provided below, I verify that I am an Officer or authorized agent of the Client and agree that I have fully read, understand and accept the Terms and Conditions as stated above.

CITY OF SMYRNA, GEORGIA

Client

Pond & Company

Signed (Must be an Officer or Authorized Agent)

DEREK NORTON

Signed (Must be an Officer or Authorized Agent)

Typed Name

MAYOR

Typed Name

Title

NOVEMBER 7, 2022

Title

Date

Date

ATTEST:



Heather K. Peacon-Corn, City Clerk



October 11, 2022

Mr. Joe Bennett, City Administrator
City of Smyrna, GA
2800 King Street
Smyrna, GA 30080

Re: Riverline Park Splash Pad

Mr. Bennett,

Pond & Company (Pond) is pleased to provide the City of Smyrna with a proposal for design development, construction documentation, and construction period services for the Riverline Park Splash Pad located at 6043 Oakdale Road. The park design shall incorporate the following key components:

- A splash pad (engineered by others)
- Locations for future pavilions
- Misc. park amenities including benches, trash cans, and hardscapes
- Prefabricated restroom building (engineered by others)

Upon notice to proceed and receipt of a survey, Pond will develop a conceptual site plan for approval by the City and then request geotechnical testing for the locations of the pavilions if needed prior to proceeding to final design.

SCOPE OF PROFESSIONAL SERVICES

Project Management and Client Communication

Sydney Thompson will be your Project Manager and main point of contact supported by Andrew Kohr as Project Principal. We will schedule coordination and review meetings (either through Zoom, Microsoft Teams or on site/in person) with City staff on an as-needed basis to review designs. We anticipated a three-month process for completed design plans.

TASK 1 – CONCEPT DESIGN & DESIGN DEVELOPMENT

- A. Pond will use the existing survey provided by the City to create a conceptual site plan design that incorporates the elements listed above.
- B. Pond will send the concept plan to the City for their review and feedback. This proposal assumes one round of minor design adjustments to the conceptual site plan based on City comments.
- C. Once the conceptual site plan is approved by the city, Pond will move into Design Development.
- D. The site plan will incorporate the splash pad vendor layout and the prefab restroom building location.
- E. Pond will propose site furnishings that match the current City standard/aesthetic.
- F. Pond will review layout and amenities with the City. Once plan is approved, Pond will request geotechnical testing for up to 3 locations for future pavilions sites. The results of this testing will also inform the final design of the splash pad.
- G. Upon receiving results of geotechnical testing, Pond will advance the plans to 90% completion in preparation for permitting.

TASK 2 – PERMITTING, CONSTRUCTION DOCUMENTS, & BIDDING

- A. Pond will prepare plans to the 90% design level for the park limits specified in Exhibit 1 in the following format:
 - a. Cover Sheet with location/vicinity maps

- b. Index sheet, General Notes, Abbreviations, and Legend
- c. Site Layout Plan with detail call-outs
- d. Fine Grading Plan with spot elevations
- e. Erosion Sedimentation & Pollution control plans and details as required
- f. Landscape Plan (including tree protection and recompense)
- g. Dimensioned Hardscape Plan
- h. Restroom design and details (provided by vendor)
- i. Splashpad design and details sheets (provided by vendor)
- j. Site Construction Details (including all hardscape elements and site furnishings)
- B. Pond will submit these plans for permit to the City of Smyrna and the county health department.
 - a. Pond will attend up to two (2) progress or coordination meetings with the permitting departments.
- C. Pond will address comments on the above plans that fit within the scope of this proposal. This proposal includes up to two rounds of revisions—additional revisions may require additional fee.
- D. After permitting is complete, Pond will prepare a conformed set of final construction documents that incorporates all permitting related comments and changes. This ready-for-construction set of plans will be provided in PDF format to The City of Smyrna and the City's designated contractor.

TASK 3 – CONSTRUCTION OBSERVATION

- A. Pond will attend a kickoff/site visit meeting with City staff and the selected contractor to discuss the proposed project and review construction period timelines.
- B. Pond will perform up to two site visits which inclusive of a punch list review.
- C. Pond will respond to up to five RFIs.
- D. Redesign and/or permit revision/resubmittals after initial permit review approval is obtained is not included.
- E. Any construction phase site visits beyond the seven included in this proposal may incur additional costs.
- F. Any redesign, including due to client direction, as-built analysis, or unforeseen conditions may incur additional cost.
- G. As-builts and record drawings are to be the Contractor's responsibility and are excluded from this proposal.

CONDITIONS OF SERVICE

- A. This proposal does not include any platting services (including consolidation plat(s)).
- B. The City will provide Pond with a topographic survey inclusive of a tree survey, utilities and property lines.
- C. Pond's subconsultants will coordinate with the City regarding site access and visitation.
- D. The proposed development will not require variances, waivers, or rezoning.
- E. The proposal excludes the following design:
 - a. Electrical design
 - b. Architectural design
 - c. Splash pad design
 - d. Irrigation design
- F. The proposal assumes less than one acre of disturbance and excludes stormwater quality and management design (including any hydrological study/reporting).
- G. Design solutions resulting from significant unknown subsurface conditions are excluded from this scope.
- H. Any required traffic study or public roadway improvement design will be provided by others or can be performed by Pond as an additional task item outside the scope of this contract.
- I. Easement acquisition and/or coordination with neighbors is not included in this proposal and will be by others, if required.
- J. It is assumed that any required identification or wayfinding signage will be designed and permitted by others.
- K. Public engagement is excluded from this proposal.
- L. Renderings (both plan and perspective) are excluded from this proposal.

- M. No environmental site assessments (ESA) of any type are included. It is understood that any required environmental remediation will be completed by others. No environmental remediation plans or related design is included in this proposal.
- N. This proposal assumes that all necessary utilities are existing and nearby with enough capacity, and will not require upgrade, off-site extensions to this site, or pump stations/force main. If it is later discovered that the capacity of the existing utilities is insufficient, this proposal will be re-evaluated.
- O. Pond can assist with the coordination of sanitary sewer or storm pipe investigation if needed, as an additional task item outside the scope of this contract.
- P. This proposal assumes that all project improvements will be designed and developed in a single phase so that all improvements will be covered by a single set of plans and permit submittal.
- Q. Field delineation/survey of possible State Waters / Wetlands / FEMA boundaries and associated permitting is excluded.
- R. It is understood that the permitting process is beyond the control of Pond and that the governing jurisdiction(s) may or may not issue a permit for the proposed improvements, as currently conceived.
- S. While Pond will deliver a value-conscious design and seek the City's preference on significant cost related decisions when options are present, a detailed value-engineering analysis after plans are complete and a permit is obtained is not included. It is recommended that final cost analysis not be completed until after the permit is obtained.
- T. Although every effort will be taken to minimize any potential cost-related changes in subsequent phases, Pond cannot guarantee that such changes will not result from the review and approval process with the City/County in the effort to obtain a land disturbance permit.
- U. The City is responsible for bidding and awarding the project.
- V. Services not specifically included in the proposal, or material changes requested after professional services have commenced, will be considered additional / out of scope services and will be approved via a contract change order prior to commencement of the additional work.

FEE STRUCTURE

The following fee includes professional design services and all project related expenses to complete the scope of work outlined above:

Task 1-2: Concept Design (LUMP SUM FEE)	\$29,500.00
Task 3: Construction Observation (HOURLY NOT TO EXCEED)	\$5,000.00
Grand Total:	\$34,500.00

The City will be responsible for all application, bond, and permit fees.
Should you wish to proceed, please sign below and our attached terms and conditions.

Please let me know if you have any questions and thank you again for your trust in our firm. Should you find this proposal acceptable, please review and sign below, as well as the attached standard contract form.

Sincerely,



Sydney Thompson, PLA, ASLA, GSWCC Level II
Project Manager | PLACE
404.748.4780
thompsons@pondco.com



Andrew Kohr, Associate Principal, PLA, ASLA
Project Director | PLACE
404.556.8758
kohra@pondco.com

ACCEPTED BY: BY SIGNING BELOW THE UNDERSIGNED REPRESENTS THAT HE/SHE IS DULY AUTHORIZED TO EXECUTE THIS BINDING AGREEMENT ON BEHALF OF THE CLIENT.

Signature: _____

Printed Name & Title: _____

Date: _____

Attachments: Pond100 Terms and Conditions of the Contract

EXHIBIT 1: SCOPE LIMITS

