

**HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT  
BOARD OF TRUSTEES**

Date: June 26, 2023

Agenda Item: I.8

Board Goal: Board/Staff/Community Relations

Subject: Consideration and possible approval of 2023 Bond – Engineering Services Contract for High School Baseball and Softball Artificial Turf and other Athletic items

Administrator Responsible/Position: Max Cleaver, Chief Operations Officer

**A. Purpose of Agenda Item:**

Action needed                       Information only                       Receive input

**B. Authority for This Action:**

Local Policy                       Law or Rule                       N/A

**C. Goal or Need Addressed:**

Maintain clean, safe facilities.

**D. Summary:**

Previous board action relating to this item

Future action anticipated -

Background information – The 2023 Bond contains provisions for Athletic improvements at three high schools including the installation of artificial turf on three baseball and three softball fields, improvements to LHS baseball and softball venues, track and retaining wall, and sports lighting improvements at Hays HS (tennis) and Barton MS (tennis and stadium) with an estimated total project budget of \$15,147,210, referred to as Bid Package 11. In an attempt to complete the baseball and softball projects by January 15, 2024, staff recommends hiring the design professional now and follow this suggested schedule:

- Recommended Engineer to Board of Trustees: June 2023
- Design/Bid/Approval: June-September 2023
- Start Construction: October 2023
- Substantial Completion: January 15, 2023

Staff is recommending CEI and Principal Jeff Bresee to design this project in the amount of 5% of the construction costs, to be paid per the contract in two equal phases including

- 1) design and procurement and
- 2) construction observation & management assistance.

**E. Comments Received:**

Cabinet       DLT       FBOC       Teacher Org. Reps.       Other: Staff

**F. Administrative Recommendation:**

Staff recommends consideration of a professional services agreement with CEI.

**G. Fiscal Impact and Cost: Amount: 5% of construction costs**

Budget                       2023 Bond                       Grant/Special Funds                       Other

**H. Monitoring and Reporting Time Line:**

Person responsible for evaluating this decision or action: Max Cleaver, COO; Nate Wensowitch, Dir. Planning & Const.

Evaluation method and time line:

Next report to the board

**I. Suggested Motion:**

I move that the Hays CISD Board of Trustees approve a contract with CEI for design services related to the 2023 Bond Baseball and Softball Improvements, and other athletic improvements, and authorize the Superintendent to negotiate and execute a satisfactory contract, as presented.



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## I. PROJECT DESCRIPTION

CEI will provide turn-key engineering services to Hays CISD for the baseball and softball facilities improvements at Hays High School, Johnson High School, and Lehman High School. Project improvements shall include new synthetic turf baseball and softball fields and bull pens and associated improvements, and replacement of batting cage synthetic turf surfacing as applicable at each campus. Improvements at each campus shall also include the addition of shade structures over existing and new batting cages, shade structures over existing and new grandstands, and field lighting improvements.

At Lehman High School, improvements shall also include new restroom/concession facilities, new baseball and softball grandstands and press boxes, a new dual tunnel softball batting cage, re-alignment of the softball outfield wall, replacement of baseball outfield wall with taller wall to compensate for distance to Homeplate, and other improvements necessary to render the finished facility at Lehman High Schools equivalent to that of Hays and Johnson High Schools. Improvements shall also include at all three high schools.

## II. SCOPE OF BASIC SERVICES

### Phase I - Design & Procurement Assistance

- A. Conduct design kickoff meeting and consult with the Owner to determine the requirement of this Project.
- B. Utilize the geotechnical reports (provided by Owner to CEI) to determine the means of soil stabilization for each of the new facility components.
- C. Provide storm water analysis report as needed for project storm water design and project permitting as required.
- D. Utilize topographic surveys (provided by Owner to CEI), geotechnical report and storm water report to create proposal documents for the Sealed Proposal process via the Texas Purchasing Networks such as TIPPS and BuyBoard, including signed and sealed construction drawings and technical specifications for all new improvements.
- E. Attend and conduct design 35% (SD), 65% (DD) and 95% (CD) design review meetings and if necessary, attend district board meetings to present each drawing stage to the school board.
- F. Provide project stormwater pollution prevention plan per state and federal requirements and codes.
- G. Prepare and submit, as needed, all required documents and drawings required to secure approval of governmental bodies holding jurisdiction over the project with the understanding that at minimum, all three high schools fall under a separate jurisdiction.
- H. Issue proposal documents to interested Contractors and administer instruction to Contractors during the proposal process via addenda as needed.
- I. Attend and conduct pre-proposal meeting on the project site and provide information as needed to Proposers during the proposal process including.
- J. Attend proposal opening and evaluation meeting and provide information as needed in order for Owner to finalize Proposal point system.
- K. Assist Client in negotiations with Contractor as needed to finalize terms of contract.
- L. Attend district board meeting wherein board shall consider the award of contract to project contractor.

**Phase I Fees: 2.5% of the cost of construction based upon the proposal from the successful contractor, including alternates designed. This fee includes all reimbursable expenses with the exception of permitting fees paid by CEI.**

**Phase II – Construction Observation and Construction Management Assistance**

- A. Issue Notice of Award to project contractor and copies of the proposal documents required for bonding and contract finalization. Review project documents bonds and provide final contract documents to the Client for signature.
- B. Attend and conduct the preconstruction conference and provide preconstruction meeting notes to the District and Contractor.
- C. Assist in the coordination of project construction staking (cost of staking not included).
- D. Assist in the coordination and scheduling of project materials testing with independent testing lab on all materials testing and review and interpret all testing results.
- E. Process all project submittals.
- F. Respond to all project RFI's.
- G. Process all project pay applications and change directives.
- H. Attend and conduct weekly construction progress meetings (as needed based upon actual workflow) and perform weekly on-site observations of materials and work and submit meeting minutes/observation reports to the district for all meeting and site visits.
- I. Communicate with Contractor as needed to track project timeline, budget and quality and issue directive to Contractor as required.
- J. Create final punch lists and provide site visits to project site to make observations of punch list work, including providing observation reports/punch list updates.
- K. Provide As-built drawings upon project completion.
- L. Prior to the end of the one-year project warranty period, attend on-site warranty observation meeting at each site and if needed, issue warranty work directives to the contractor, and assist with the completion of any warranty work.

**Phase II Fees: 2.5% of the cost of construction based upon the final pay application issued by the project contractor. This fee includes all reimbursable expenses with the exception of permitting fees paid by CEI.**

**III. RESPONSIBILITY OF CLIENT**

Client shall provide to CEI, the following items:

- A. Client shall provide the following:
  - 1. Access to site
  - 2. Topographic survey or as-built drawing of each site depicting as-built conditions, elevations and grades. This shall be provided in AutoCAD format.
  - 3. Geotechnical report of each site.
  - 4. Copies of as-built drawings that exist for each site in PDF format.

**IV. SERVICES NOT INCLUDED / ADDITIONAL SERVICES**

In addition to the services described above, CEI is capable and available to provide the following services on an “as requested” basis. An Extra Work Authorization (EWA) form or contract amendment will be issued for any services outside the scope of this proposal. All EWA's or contract amendments will be approved and signed by the Client identified herein prior to beginning work. All additional services will be performed on an hourly basis per the current Schedule of Charges.

- Feasibility study, including physical, political, and/or financial opportunities or constraints
- Contract management and coordination of subconsultants including, but not limited to, the follow services:
  - Topographical survey
  - Geotechnical investigation/report

- Environmental studies/report (e.g. Phase I & II ESAs)
- Traffic study/report
- Water flow test/distribution report
- Historical and archeological studies
- Ecological studies (e.g. wetland and threatened & endangered species)
- Preparation of perspectives, renderings, and models
- Attendance/presentation at public meetings (e.g. Planning Commission, City Council, Zoning Board of Appeals, Board of Adjustments, etc.)
- Preparation/presentation of conditional or special use permit applications
- Obtaining new or updated title policies
- Platting/replatting
- Preparation of easement and right of way documents, including new and vacations/abandonments
- Preparation of covenant and development agreements
- Design and plan preparation for major stormwater drainage improvements or relocations (e.g. box culverts, large ditches, and storm sewers greater than 4-foot in diameter)
- Preparations of flood studies, elevation certificates, FEMA or Corp of Engineer applications or permits
- Preparation of documentation, applications or permits for stormwater pollution prevention plans, NOIs, etc.
- Design and plan preparation for offsite utility extensions other than those immediately adjacent to the project site
- Design and plan preparation for offsite street improvements, such as road widenings, acceleration/deceleration lanes, and medians (*design/plans for both curb cuts and municipal sidewalks along the site frontage will be included in the basic services for design projects*)
- Preparation of retaining wall design/plans
- Preparation of opinions of probable construction costs (OPCs)
- Materials Testing
- As-built survey/preparation of final record drawings

**Boundary Issues**

Boundary determinations often disclose unseen or unknown conflicts between record documents and/or the location of physical improvements. Thus, in the process of conducting the research, field work, and/or analysis, if the surveyor identifies a possible boundary or title conflict, a sketch showing the revealed conditions will be prepared and a meeting with the client and affected neighbors (if desired) will be scheduled. Following the meeting, if the client wishes to engage the surveyor to assist in pursuing resolution of the problem as a consultant, expert and/or formal or informal mediator, the contract will be modified accordingly. Otherwise, the client will be invoiced only for the time expended to that point, and work on the survey will be suspended until or unless the client is able to resolve the issue by agreement or litigation, at which time a subsequent contract may be executed to complete the survey pursuant to that agreement or litigation.

**V. SCHEDULE OF CHARGES**

Charges for our services are divided into three categories: Labor, Consultants, and Reimbursable Expenses.

**LABOR:** For fees billed on an hourly basis, labor charges are billed by category as follows:

<b><u>TEXAS (01-01-23)</u></b>	
Officer / Branch Manager	\$ 235.00
Department Manager	\$ 210.00
Client Sector Leader	\$ 200.00
Senior Project Manager	\$ 195.00
Program Manager	\$ 185.00
Project Manager	\$ 175.00
Assistant Project Manager	\$ 140.00
Senior Project Engineer	\$ 185.00
Project Engineer	\$ 165.00
Assistant Project Engineer	\$ 135.00
Civil Designer	\$ 125.00

Registered Landscape Engineer	\$ 160.00
Assistant Landscape Engineer	\$ 130.00
Landscape Engineer Designer	\$ 125.00
Registered Land Surveyor	\$ 165.00
Assistant Project Surveyor	\$ 130.00
Survey Project Manager	\$ 160.00
Assistant Survey Project Manager	\$ 130.00
Sr. Survey Party Chief	\$ 115.00
Survey Party Chief	\$ 95.00
Survey Technician	\$ 105.00
Field Specialist	\$ 85.00
Senior Project Designer	\$ 150.00
Project Designer	\$ 130.00
CAD Designer	\$ 105.00
CAD Technician	\$ 90.00
Construction Observer	\$ 110.00
Land Acquisition Specialist	\$ 130.00
Project Coordinator	\$ 120.00
Program Assistant	\$ 90.00
Administrative Assistant	\$ 75.00

**REIMBURSABLE EXPENSES:** All fees paid by CEI related to permitting such as impact, permitting, expediting, and review fees will be charged to Hays CISD as reimbursables.

#### **REVENUE RECOGNITION**

The intellectual services and resulting instruments of service (Scope of Basic Services and any subsequently agreed amendments or additions) provided by this Agreement whether in various stages of completeness or in whole are considered earned by CEI in its performance obligation to Client as prescribed by said Agreement and deemed usable by Client at the time they are earned, cost incurred, and progressively billed. Further, at time of received payment by Client, Client acknowledges its possession of, acceptance, and confirms its legal right to use said intellectual services and resulting instruments of service, in part or in whole, for the specific intent they were provided.

#### **VI. CREDIT POLICY**

Terms will be given only to clients with approved credit. Invoices will be rendered monthly, either as final or progress billing. CEI payment terms are net 30 days. Invoices past 30 days due will be subject to a monthly service charge, which will be assessed in compliance with state usury laws. Should the account be placed for collection with an outside collector, the cost of such collections will be added to the principal amount owed. CEI may stop work on any account that is 60 days delinquent. In the event that CEI elects to stop work as provided herein, Client will be assessed a resumption of work charge equal to 20% of the total contract amount. Said resumption of work charge and all outstanding invoices must be paid in full by Client prior to the resumption of work on the project. Client agrees that the balance as stated on the invoice from CEI to Client is correct, conclusive, and binding on the Client unless Client within thirty (30) days from the date of the receipt of the invoice notifies CEI in writing of the particular item that is alleged to be incorrect.

#### **VII. STANDARD TERMS AND CONDITIONS**

##### **STANDARD OF PRACTICE**

Services performed by CEI under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by similar professionals currently practicing in the same locale under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise. All other common law warranties are hereby expressly disclaimed.

Client agrees that payment of all CEI invoices under this Agreement is for services rendered on behalf of Client and payment is not conditioned on (1) the receipt of any municipal or governmental

approvals, authorizations, permits, or licenses or any type; (2) the availability of any Utility services: or (3) payment to Client by any third party.

#### **OWNERSHIP OF DOCUMENTS**

All documents including drawings and specifications prepared or furnished by CEI pursuant to this Agreement are instruments of service in respect to the project and CEI shall retain an ownership and property interest therein whether or not the project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the project by Client or others.

#### **RE-USE OF DOCUMENTS**

Copies of all reports, drawings, specifications, field data, field notes, laboratory test data, calculations, estimates, and other documents provided to Client as instruments of service are for use on the project specifically described in this Agreement. Any re-use of these by the Client for any other project or extension of this project, without the express, written authorization, verification, or adaptation by CEI, will be at Client's sole risk and without liability or legal exposure to CEI or CEI's independent professional associates or consultants, and Client shall indemnify, hold harmless and defend CEI and CEI's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

#### **INSURANCE**

CEI maintains the following insurances:

Worker's compensation of a form and in an amount as required by law and employer's liability insurance of \$1,000,000.

Comprehensive general liability with limits of \$4,000,000 (\$2,000,000 per occurrence), and automotive liability insurance with limits of \$1,000,000 combined single limit.

Excess liability umbrella insurance of \$5,000,000.

Professional liability insurance with a limit of \$2,000,000, per claim/annual aggregate.

Upon written request of Client, CEI will provide additional insurance, if available; including increased coverage and/or limits, and the Client shall pay CEI an agreed amount for the increased coverage.

#### **LIMITATION OF LIABILITY**

The Client hereby agrees that, to the fullest extent permitted by law, CEI's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising including but not limited to CEI's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed the total sum paid on behalf of or to CEI by CEI's insurance policies applicable thereto and CEI's deductible amounts (excluding fees, costs & expenses of investigation, claim adjustment, defense, and appeal).

Any service deleted from this offer by the Client will become the responsibility of the Client. If this proposal was written without the benefit of an on-site investigation, changes in the scope may be necessary. CEI shall be held harmless in the event that any unseen condition adversely affects the design or intended use of the property in any way.

#### **INDEMNIFICATION**

The Client shall indemnify, hold harmless and defend CEI, its officers, directors, employees, agents, consultants, and subconsultants from and against any and all liabilities, damages, or expenses, including without limitations any and all legal costs and expenses; whatsoever in connection with any personal injury or property damage arising out of or in any way connected with the negligence, reckless, or intentional acts or omissions by Client, its officers, directors, shareholders, agents, employees, consultants, and subcontractors, whether said acts or omissions and negligent reckless intentional or unintentional.

Further, the Client shall, to the fullest extent of the law, indemnify, defend and hold harmless CEI, its directors, officers, employees, agents and subcontractors from and against all claims or action, based on, or arising out of, damages or injuries to persons or property caused by, or arising out of, any

hazardous, and/or toxic substances present at the site where CEI and/or its subcontractors have performed work.

In accordance with generally accepted construction practices, the Client and Client's contractors shall be solely and completely responsible for the conditions of the job site, including the health and safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Any construction observation by the engineer of the contractor's performance is not intended to include review of the adequacy of the contractor's safety measures, in, on, or near the construction site.

#### **WAIVER OF CONSEQUENTIAL DAMAGES**

Client hereby irrevocably and unconditionally waives, to the maximum extent allowed by law, any right to claim or recover any special, exemplary, indirect or consequential damage in any legal action or proceeding in respect of this contract unless otherwise stipulated herein.

#### **DISPUTE RESOLUTION**

Client and CEI agree to attempt to settle all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement by direct discussions; however, absent resolution by direct discussions, they agree to attempt to settle disputes by formal mediation according to the Construction Industry Mediation Rules of the American Arbitration Association. Absent resolution by mediation they agree to binding arbitration under the Rules of the American Arbitration Association.

Client and CEI waive consequential damages for claims, disputes, or other matters in question arising out of or related to this agreement. This mutual waiver is applicable, without limitations, to all consequential damages due to either party's termination of this agreement, except for any licensing or use fees charged to Client by CEI for continued use of CEI's instruments of service upon termination of this agreement.

#### **SEVERABILITY**

Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Client and CEI will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision.

#### **PROJECT PUBLICITY AND RECOGNITION**

During development construction, or upon completion of the project, CEI's name will be included on any public recognition / project identification display indicating design team, owners, and / or financiers. CEI shall be allowed to place or hang a temporary banner on the site during construction of the project.

#### **LIEN RIGHTS**

Client agrees that CEI shall have a lien upon real property constituting the project site for all unpaid sums due pursuant to this agreement or any addendum hereto, and that CEI is authorized to perfect a lien, enforce the lien, and foreclose the lien in the manner prescribed under local statutes for the perfection, enforcement and foreclosure of a mechanic and material man's lien upon real property.

#### **AMENDMENTS**

The duties, responsibilities, and limitation of authority of the Client or CEI shall not be made or extended without a written, executed agreement between CEI Engineering Associates, Inc and the Client.

#### **PROJECT DELAY**

Client acknowledges that in the event this project is delayed or put on hold for more than 60 days, after authorization to proceed, Client acknowledges that a resumption fee may be necessary based on the progress of the project prior to the hold and the timing associated with the hold. Client and CEI agree to negotiate a reasonable resumption fee prior to resumption.



### **SUCCESSORS AND ASSIGNS**

CEI Engineering Associates, Inc and the Client each bind themselves, their associates, directors, partners, successors, executors, administrators and assigns to the other party to this Agreement and to the associates, directors, partners, successors, executors and administrators and assigns to such other party, with the respect to all obligations contained in this Agreement. CEI Engineering Associates, Inc. may assign its rights and obligations under this Agreement at any time without the consent of the Client. However, the Client shall not assign its obligations under this Agreement or sublet as a whole, without the prior written approval by CEI Engineering Associates, Inc.'s of the successor or assignee and its ability to comply with the terms and conditions of this and/or subsequent written Agreement. All assignments made by Client without CEI Engineering Associates, Inc.'s consent shall be considered null and void.

### **TERMINATION**

Either Party may terminate this Agreement in full or in part, in writing, if the other Party fails to fulfill its obligations under the Agreement through no fault of the other Party. In such event, one may declare the other in default by issuing a written Declaration of Default and terminate the Agreement for cause. Prior to, an opportunity to cure any default or breach shall be given by way of a written notice being delivered to the Breaching Party including a description of the conditions constituting default or breach of the Agreement and providing the Breaching Party a period of time of ten (10) days within which to correct such conditions. If defined default or breach is not corrected within allotted number of days, then the written Declaration of Default may be issued. Upon any termination or suspension of an Agreement, CEI Engineering Associates, Inc. shall be paid for all work performed up to the date of termination or suspension.

Termination or suspension of contract shall exist when services conducted and provided by CEI to the date of termination are paid by Client and shall be deemed nonrefundable, at which time, control of said provided services will be transferred to Client with no further obligation of CEI.

### **PROVIDED DATA**

Any information or data provided by Owner or Owner's representatives or by a third party as directed by Owner or Owner's representative to CEI to be used as base or supplemental information or data to the scope shall be considered reliable and CEI shall be held harmless to any errors or omissions due to its use.

### **SITE SAFETY OR CONTROL**

In no form or fashion shall it be implied or assumed, unless expressly written into scope, that CEI has or will be responsible for an Owner's or Contractor's control of the site nor will CEI dictate the means and methods of the Owner, Contractor and Contractor's subcontractors regarding preparation of, conducting, and the completion and closeout of construction, safety, and control of site.

All provisions under the heading "STANDARD TERMS AND CONDITIONS" shall survive termination or completion of this agreement.

**VIII. APPROVAL SIGNATURE AND AUTHORIZATION TO PROCEED**

Execution of this document in all required locations shall form the entire Professional Services Agreement between the Client and CEI. This Proposal and Agreement shall be executed by both parties, with both parties receiving a fully executed copy thereof. A copy of the executed Agreement shall be equally binding as the original.

In the event that the Client issues a notice to proceed to CEI prior to the execution of this contract, the Client acknowledges that the services rendered by CEI will be in accordance with the terms and conditions contained in this proposal.

In the event that the Client instructs services on the contract/agreement to be on hold for a period greater than forty-five days, Client acknowledges that CEI will not proceed until a new contract between CEI and the client can be executed.

This proposal shall become null and void if signatures have not been obtained within forty-five days of proposal date. If authorization to proceed is not given after the proposal has been executed said agreement will become null and void within forty-five days of the date of the Client's signature.

**The following is the complete Contracting Entity (Client) name and address that is responsible for this contract, its terms and conditions, and for payment of CEI invoices:**

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Contracting Entity Name (Client) include its business structure of INC, LLC, LP, etc.  
Responsible for contract terms, conditions, obligations and payment

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Complete mailing address for invoicing and/or receiving notification (Street / PO Box/ Suite number, if required)

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City / State / Zip

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Complete Phone Number

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Signature - legally authorized to bind Contracting Entity	Print Name	Title	Date
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Signature, CEI Engineering Associates, Inc.	Print Name	Title	Date
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