

TERMS AND CONDITIONS

This Agreement between _____ (“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 _____, 20____. The parties agree as follows:

1.0 Services:

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

_____, 20____ (“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

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 Gwinnett County, Georgia, which shall be the sole and exclusive venue for all such litigation. The parties to this Agreement consent to jurisdiction in Gwinnett 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 Gwinnett 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 Gwinnett 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.

Client

Pond & Company

Signed (Must be an Officer or Authorized Agent)

Signed (Must be an Officer or Authorized Agent)

Typed Name

Typed Name

Title

Title

Date

Date

February 18, 2022

Shannon Powell
Assistant City Manager
City of Avondale Estates
21 North Avondale Plaza
Avondale Estates, Georgia 30002
spowell@avondaleestates.org

Re: Laredo Drive Improvements
City of Avondale Estates, Georgia

Ms. Powell:

Pond thanks you for the opportunity to assist you with the design of your project. Based on our conversations, we understand that the City of Avondale Estates is looking to restore a portion of Laredo Drive that has various levels of pavement distress. The area of concern extends from Clarendon Avenue to the terminus of Stone Mountain Trail as it intersects Laredo Drive. The aerial photo below shows the project limits and overall project length.



Under this proposal, Pond will obtain a survey of the area to use as our base plan. Pond will also sub-consult with a licensed geotechnical engineer (GeoHydro) to perform exploration to evaluate the subgrade conditions and provide pavement rehabilitation options. Pond will also provide conceptual design to show enhancement options that include pedestrian and landscaping improvements. Using the information collected from the survey, geotechnical recommendations, and preferred enhancements, Pond will prepare construction documents that can be used for bidding the project for construction.

The scope of this proposal is further described below. Any new information acquired after this scope of work is submitted may require a reevaluation and revision of the scope of work.

SCOPE OF PROFESSIONAL SERVICES

TASK 1 – TOPOGRAPHIC AND RIGHT OF WAY SURVEY

Pond will subcontract with a surveyor licensed in the State of Georgia to perform research, establish survey control and locate property monumentation, if necessary, to reflect critical property lines within the survey area. The surveyor will perform a field run topographic survey of the approximate 2.0-acre area of Laredo Drive. Trees that are 6-inches in diameter and larger will be located and supplement the final survey. No right-of-way acquisition is included in this scope and will be additional scope and fee if requested.

Underground utilities will be located utilizing the services of a private utility marking service. Services performed by the private utility marking company will be provided at Quality Level C for the overall survey area.

TASK 2 – GEOTECHNICAL SERVICES

Pond will subcontract with a geotechnical engineer licensed in the State of Georgia to perform exploration to document the pavement component thickness, evaluate the subgrade conditions beneath the pavement section, determine the potential cause(s) of pavement distress if possible, and provide options for pavement rehabilitation.

The geotechnical engineer will core the pavement using a 6-inch diameter core barrel and measure pavement component thickness at seven locations along Laredo Drive, one location on Perry Street, one location on Wells Street, and one location at Stone Mountain Trail (10 total). The pavement component thickness will be measured at each core location the nearest ¼ inch.

At each core location, the geotechnical engineer will attempt to advance a hand auger boring to a depth of about 4 to 6 feet below the pavement surface. Portable dynamic cone penetrometer testing (ASTM STP-399) will be performed at regular intervals in each hand auger boring. The hand auger borings may provide only limited data. The hand auger boreholes will be backfilled with soil cuttings and each core hole patched with cold patch asphalt or concrete as appropriate.

Samples from the field operation will be physically examined, and a visual classification will be assigned in accordance with the Unified Soil Classification System. Hand auger boring logs will be prepared which provide portable dynamic cone penetrometer resistances, detailed soil descriptions, and groundwater conditions.

The geotechnical engineer will prepare a brief report including pavement component thickness measurements, hand auger boring logs, an opinion regarding the cause(s) of current pavement distress, and roadway repair/rehabilitation options.

TASK 3 – CONCEPT DESIGN

- A. Pond will visit the project site to observe existing conditions.
- B. Based on a site walk on 2/18/2022, Pond will develop a concept design through preliminary layout plans showing the following for Client review:
 - 10-foot-wide Cycle track with narrowed 10-foot travel lanes, on west side of the street; plastic bike lane delineators will serve as the buffer between traffic and cycle track.
 - Widened sidewalk and adjusted curbs at the intersection of Laredo and Clarendon Avenue.
 - Widened sidewalk and adjusted curbs, with crosswalk, where the eastbound Stone Mountain Trail intersects Laredo Drive.
 - Improvements on both sides of the CSX railroad to link the Stone Mountain Trail to the new crosswalk where the westbound Stone Mountain Trail intersects Laredo Drive. (no pavement work inside CSX ROW)
 - New granite curb on east side of Laredo Drive.
 - Maintain existing curb and asphalt sidewalk on west side of Laredo Drive.
- C. After client concurrence with the layout, Pond will commence with construction documents.

TASK 4 – CONSTRUCTION DOCUMENTS AND PERMITTING

- D. Pond will develop civil design and construction plans for remediation of the pavement in Laredo Drive using the survey completed Task 1, the geotechnical recommendations from Task 2, and the conceptual plan from Task 3. These documents are expected to include:
 - a. Civil Cover Sheet
 - b. Civil Notes, Legend, and Abbreviations
 - c. Existing Conditions Plan (copy of survey)
 - d. Site Demolition Plan
 - e. Dimensional site layout and striping plan
 - f. Pavement Plan
 - g. Grading and Drainage plan (if necessary)
 - h. Erosion and sedimentation control notes

- i. Erosion and sedimentation control plan
 - j. Civil construction details
- E. Before issuing final plans, the documents will be provided to the City for review and comment. Comments that fit within the scope of this proposal will be addressed and incorporated into the documents. This proposal assumes up to one (1) interim design submittal for review.
 - F. Upon completion of the design plans, Pond will coordinate permitting and submitting the civil documents through the City as part of the Land Disturbance Permit (LDP) process.
 - G. Revisions to Pond's plans will be made per City review comments that fit within the scope as described in this proposal.
 - H. After revisions, Pond will resubmit plans to the respective departments and meet with plan reviewers to discuss the changes.
 - I. 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 for bidding.

TASK 5 – BID ASSISTANCE AND CONSTRUCTION ADMINISTRATION

- A. Concept design assumes that the improvements will be within the existing right-of-way and not impact the retaining walls on the west side of the street or trees on the east side of the street.
- B. Upon completion of permitting, Pond will prepare a bid form listing categories of work and estimated quantities for the City's use in bidding the project. This proposal assumes that all other invitation to bid documents will be prepared by the City.
- C. During the bidding process, Pond will perform basic bid assistance services, including attendance of one pre-bid meeting (by the Pond civil engineer), answering contractor requests for information (RFI's) on the plans during the bidding process (by issuing up to two written addendums), and assistance with review of received bids.
- D. Upon the start of construction, Pond will provide construction administration services that will include the following:
 - 1. Pond's project manager will attend a construction kickoff meeting and biweekly coordination meetings. Written meeting notes and a project summary will be provided based upon each meeting. This proposal assumes a 1-month construction timeframe, so up to three (3) site visits or meetings by the Pond project manager are included.
Pond will review contractor pay applications
 - 2. Pond will review shop drawings and/or address contractor RFI's, if required. This proposal assumes that no submittal will require more than two (2) rounds of review.
 - 3. Detailed construction inspections, exhaustive or continuous project assistance, review, or inspections services are not included within the scope of this proposal.
 - 4. Redesign and/or permit revision/resubmittals after the initial permit review approval is obtained is not included in this proposal and will require additional fee.

5. Any construction phase site visits beyond the number specifically included above may incur additional costs.
- E. This proposal assumes that any required as-builts will be prepared and submitted by the selected contractor.
- F. This proposal assumes all proposed work will be conducted within the existing right-of-way.

EXCLUSIONS OF SERVICE

The following services are excluded from this proposal. However, these services can be added for an additional fee if requested.

- A. Written technical specifications (specifications will be on the drawings)
- B. Preparation of Easement exhibits and/or Right-of-Way acquisition documents
- C. Easement acquisition and/or coordination with neighbors will be by others if required.
- D. Environmental studies and state water delineations.
- E. Stream buffer variances or related services
- F. Flood modeling, flood study, or coordination with FEMA.
- G. Retaining wall or any other structural design
- H. Tree protection/replacement plans, landscape plans, and/or arborist services
- I. Cost estimating or value engineering services
- J. Utility coordination with utility providers
- K. Hydrology analysis and stormwater management design

FEES AND TERMS OF PAYMENT

Pond & Company proposes to complete the professional services specifically stated above for the fees listed below on a lump sum basis:

Task 1 – Topographic and ROW Survey	\$ 8,500
Task 2 – Geotechnical Services	\$ 6,050
Task 3 – Concept Design	\$ 1,500
Task 4 – Construction Documents and Permitting	\$ 8,750
<u>Task 5 – Bid Assistance and Construction Administration</u>	<u>\$ 3,500</u>
Total Fee:	\$ 28,300

Should you wish to proceed, please execute this agreement by signing the agreement attached to this proposal, receipt of which will serve as our official authorization to proceed.

Please let me know if you have any questions and thank you again for your trust in our firm.

Sincerely,
Pond & Company



Kevin Hendrix, PE, LEED AP
Director of Civil Engineering | Associate Principal



Matthew Wilder, PLA, ASLA, LEED AP
PLACE Program Manager | Principal