

RESOLUTION NO. 2010-06-02

A RESOLUTION OF THE CITY OF WESTON, COLLIN COUNTY, TEXAS, APPOINTING MLA CONSULTING ENGINEERS & PLANNERS AS THE CITY ENGINEER/PLANNER.

WHEREAS, the City Council finds that appointment of MLA Consulting is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTON, TEXAS:

1. MLA Consulting Engineers & Planners, whose office address is P. O. Box 548, Wylie, Texas 75098-0548, is appointed as the City Engineer/Planner for the City of Weston.

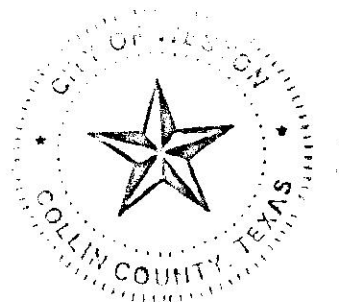
ADOPTED by the City Council of the City of Weston, Texas on this the 8th day of June, 2010.

APPROVED BY:

Patti Harrington
Patti Harrington, Mayor.

ATTEST;

Leeann Oland
Leeann Oland, City Secretary



AGREEMENT BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL ENGINEERING SERVICES

THIS IS AN AGREEMENT made as of 6-8, 2010 between the City of Weston, Texas acting through its Mayor, hereunto duly authorized so to do (OWNER) and MLA Consulting, LLC, a Texas Limited Liability Company (ENGINEER). OWNER intends to construct the following project :(hereinafter called "the Project"):

General Engineering Consultation Services

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER'S professional engineering representative for the Project as set forth below and shall give professional engineering consultation and advice to OWNER during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 GENERAL

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary architectural, civil, structural, mechanical and electrical engineering services.

1.1.2 The OWNER shall authorize engineering services on each project. The OWNER may delete or modify the size of any project upon written notice to the ENGINEER.

1.2 PRELIMINARY DESIGN PHASE

After authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.2.1 In consultation with OWNER and on the basis of the accepted Project.

1.2.2 Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.2.3 Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.

1.3 FINAL DESIGN PHASE

After authorization to proceed with the Final Design Phase, ENGINEER shall:

1.3.1 On the basis of the accepted preliminary design documents and the revised opinion of probable Project Cost, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

- 1.3.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
- 1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.
- 1.3.4 Prepare for review and approval by OWNER, his legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.3.5 Furnish four copies of the above documents and present and review them in person with OWNER.

1.4 BIDDING PHASE

After written authorization to proceed with the Bidding Phase, ENGINEER shall:

- 1.4.1 Assist OWNER in obtaining bids for each separate prime contract for construction, materials, equipment and services.
- 1.4.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.4.3 Prepare a tabulation of bids and assist OWNER in evaluating bids and in assembling and awarding contracts.

1.5 CONSTRUCTION PHASE

During the Construction Phase ENGINEER shall:

- 1.5.1 Consult with and advise OWNER and act as his representative as provided in the General Conditions of the Construction Contract. All of OWNER'S instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said General Conditions except as otherwise provided in writing.
- 1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER'S efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but ENGINEER shall not be

responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations ENGINEER shall keep OWNER informed of the progress of the work and shall endeavor to guard OWNER against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.

- 1.5.3 Review Shop Drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and general compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.
- 1.5.4 Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required; have authority, as OWNER'S representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- 1.5.5 Based on ENGINEER'S on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts: such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER'S knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.
- 1.5.6 Conduct in company with OWNER, an inspection to determine if the Project is substantially complete and a final inspection for compliance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but

any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.5.

- 1.5.7 ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except ENGINEER'S own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.5.1 through 1.5.7, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the Contract Documents.
- 1.5.8 Revise contract drawings (unless redrawing is required), with the assistance of the OWNER and Contractor(s), and furnish one (1) set of Mylar reproducible record drawings as well as a computer disk containing all of the Record Drawings on AutoCAD® format.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 GENERAL

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others, Additional Services of the following types which are not considered normal or customary Basic Service; these will be paid for by OWNER as indicated in Section 4.

- 2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering design incidental thereto.
- 2.1.4 Providing any type field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.
- 2.1.5 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor(s).
- 2.1.6 Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial startup, testing, adjusting and balancing); and training personnel for operation and maintenance.
- 2.1.7 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

- 2.1.8 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).
- 2.1.9 Preparation of property or easement descriptions.
- 2.1.10 Services of a resident Project representative, and other field personnel as required, for on-the-site observation of construction.
- 2.1.11 Providing general consulting services that are requested by the OWNER that are not included in the Basic Services listed in Section 1.

SECTION 3 - PERIOD OF SERVICE

- 3.1 The period of service for this Agreement is indefinite. The obligation to provide services under this Agreement may be terminated by either party upon seven days' written notice.

SECTION 4 - PAYMENTS TO ENGINEER

4.1 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF ENGINEER

4.1.1 For Basic Services

OWNER shall pay ENGINEER for Basic Services rendered under Section 1 an amount of as determined from Curves of Median, compensation, Curve "A" General Engineering Services, Texas Society of Professional Engineers.

4.1.2 For Additional Services

OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

4.1.2.1 General

For Basic Engineering Services rendered an amount based on the rate schedule in Exhibit "A",

4.1.2.2 Special Consultants

For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.3 the amount billed to ENGINEER therefore times a factor of 1.05.

4.1.2.3 Consultant or Witness

For additional services provided for in paragraph 2.1.8 as rendered by principals and employees assigned to the Project will be on the basis of payroll costs times a factor of 2.25.

4.1.2.4 Field Survey

For contract field land surveying services, as the amount will be based on survey costs, as invoiced, times a factor of 1.10.

4.1.2.5 For Reimbursable Expenses

In addition to payments provided for in paragraphs 4.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual cost times a multiplier of 1.05 for all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

4.1.2.6 As used in this paragraph 4.1 the term "Construction Cost" will have the meaning assigned to it in paragraph 5.1, and terms "Payroll Costs" and "Reimbursable Expenses" will have the meanings assigned to them in paragraph 4.4.

4.2 TIMES OF PAYMENTS

4.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for reimbursable Expenses incurred. The statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.

4.2.2 Upon conclusion of each phase of Basic Services, OWNER shall pay such addition amount, if any, as may be necessary to bring total compensation paid on account of such phases to the following percentages of total compensation payable for all phases of Basic Services:

<u>Phase</u>	
Preliminary Design	15 %
Final Design	65 %
Bidding or Negotiating	5 %
Construction	<u>15 %</u>
TOTAL	100 %

4.3 OTHER PROVISIONS CONCERNING PAYMENTS

4.3.1 CHANGES IN PROJECT SCOPE

In the event the OWNER changes the scope of the project after the commencement of the Final Design Phase and such changes render the work unusable that has been performed to the date of the change in project scope, ENGINEER will be paid for services rendered during that phase to the date of notice of the change in project scope on the basis of Payroll Costs times a factor of 2.15 for services rendered by principals and employees assigned to the Project during that phase to date of notice of the change in project scope. In the event of any such change in scope, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

In the event the OWNER changes the scope of the project after the commencement of the Final Design Phase and such changes require the Engineer to modify, redesign or otherwise change engineering work that has been completed or partially completed at the date of the change in scope, ENGINEER will be paid for services required to modify, redesign or otherwise change completed engineering work to meet the requirements of the revised scope of services on the basis of Payroll Costs times a factor of 2.15 by principals and employees assigned to the Project. In the event of any

such change in scope, ENGINEER will be paid for all Additional Services and Reimbursable Expenses required to make the above stated changes. Before making changes to the engineering work under this provision, the ENGINEER shall submit an estimate of the cost of making the changes under this paragraph. The ENGINEER shall not begin making changes to the engineering work until authorized by the OWNER

4.4 DEFINITIONS

4.4.1 The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.

4.4.2 Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and faxes; reproduction of reports, Drawings, Specifications, and similar Project related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

SECTION 5 - CONSTRUCTION COST AND OPINIONS OF COST

5.1 CONSTRUCTION COST

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost of the entire Project to OWNER, but it will not include ENGINEER'S compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER'S legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project. When Construction Cost is used as a basis for payment it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:

- 5.1.1 For completed construction work the total costs of all work performed as designed or specified by ENGINEER.
- 5.1.2 For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal for such work.
- 5.1.3 For work designed or specified but not constructed upon which no such bid or proposal is received, the most recent estimate of Construction Cost, or, if none is available, ENGINEER'S most recent opinion of probable Construction Cost.

5.2 OPINIONS OF COST

- 5.2.1 Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2 REUSE OF DOCUMENTS

Upon receipt of final payment, any project plans, specifications, contract documents or any other project specific documents will be delivered to the City, in digital format and hard copy and shall become the property of the City.

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.3 CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Texas.

6.4 SUCCESSORS AND ASSIGNS

- 6.4.1 OWNER and ENGINEER each bind himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.
- 6.4.2 Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

6.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

6.5 All notices and statements required and provided for in this Contract shall be deemed to have been received by either party hereto when properly addressed to the party to whom directed at the addresses set forth herein and two (2) days after deposit in the United States mail with postage prepaid:

Owner: City of Weston
301 Main Street
Weston, Texas 75097

Attn: Ms. Patti Harrington
Mayor

Engineer: MLA Consulting, LLC
555 Republic Drive
Suite 420
Plano, TX 75074

Attn: Carlos Aguilar
Partner

From time to time either party may designate another address for all purposes of this Contract by mailing to the other party written notice of such change of address in accordance with the provisions hereof.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

7.1 This Agreement is subject to the following special provisions.

7.1.1 OWNER agrees to indemnify and hold ENGINEER harmless from any claims, costs, attorney's fees or causes of action arising out of claims or actions by landowners or residents in the vicinity of the Improvements founded or based upon the existence, expansion, planning, design or construction of the Improvements unless caused by ENGINEER'S negligence, gross negligence, malpractice or willful misconduct.

7.2 This Agreement (consisting of pages 1 to 10, inclusive), together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

EXHIBIT "A"
MLA Consulting, LLC.
Professional Services Rate Schedule

	\$ / Hour
Principal Engineer	125.00
Staff Engineer (P.E.)	90.00
Staff Engineer (E.I.T.)	75.00
Secretary	45.00
CAD	50.00
Mileage	0.40 / mile

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

ENGINEER:

6-8-10
Patte Harrington
Mayor
City of Weston

[Signature]
Partner
MLA CONSULTING

EXHIBIT "A"
STANDARD RATE SCHEDULE

Classification	Hourly Rate
Principal	\$150
Project Manager/Project Engineer	\$100
Graduate Engineer/Senior Technician	\$85
Technician/Draftsman	\$75
Administrative Assistant	\$55
Construction Manager	\$100
Surveyor (RPLS)	\$125
Survey Field Manager	\$90
Survey Office Manager	\$90
Survey Crew (2 Man)	\$125
Survey Crew (GPS)	\$125
Landscape Designer	\$90

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).
By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.
A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

MLA CONSULTING, LLC

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

NONE

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?


Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4


Signature of person doing business with the governmental entity

10/3/2010

Date



May 10, 2010

Honorable Patti Harrington
Mayor
City of Weston
301 Main Street
Weston, TX 75097

Dear Mayor Harrington:

MLA Consulting is honored to be considered for the role of City Engineer for the City of Weston and is pleased to submit this letter of engagement. Please find attached a draft professional services agreement for General Engineering Consultation Services. Please review the draft agreement at your convenience and let me know if you have any questions or comments.

MLA Consulting strives to provide the highest level of engineering consultation services to all of our clients and we look forward to utilizing our energy, experience and talent to benefit the City of Weston.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael James'.

Michael James, P.E, CFM
Partner
Enclosure