

THE STATE OF TEXAS

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COUNTY OF GALVESTON

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**CONTRACT FOR  
PROFESSIONAL SERVICES – TESTING**

THIS AGREEMENT, entered into as of this [INSERT DATE] day of [INSERT MONTH], [INSERT YEAR], by and between the City of Friendswood, Texas (hereinafter called the "CITY") acting herein by its Mayor, duly authorized by resolution of the City Council of the City of Friendswood and [INSERT TESTING FIRM], [INSERT ADDRESS], [INSERT CITY, STATE, ZIP] (hereinafter called the "AGENT") acting herein by [INSERT AGENT CONTACT], [INSERT CONTACT TITLE] hereunto duly authorized:

**WITNESSETH THAT:**

WHEREAS, the CITY desires to engage the AGENT to (1) render certain technical and professional services hereafter described in "Scope of Services" or (2) perform certain work hereafter described in "Scope of Services" for the project briefly described as [INSERT PROJECT NAME]. NOW, THEREFORE, the Parties hereto do mutually agree as follows:

**I. EMPLOYMENT OF AGENT**

The CITY hereby agrees to engage the AGENT and the AGENT hereby agrees to perform the "Scope of Services" hereinafter set forth. This contract shall be performed in [INSERT COUNTY] County, Texas.

**II. SCOPE OF SERVICES**

Testing services in connection with construction phase services including, but not limited to, all necessary correspondence, communications, and document preparations for [INSERT PROJECT NAME].

The work is further described in detail on Attachment A – [INSERT PROPOSAL NAME] proposal dated [INSERT PROPOSAL DATE].

**III. TIME OF PERFORMANCE**

AGENT shall proceed immediately upon execution of this Contract with performance of the services called for under the Scope of Services with completion within [INSERT WRITTEN DAYS] ([INSERT # DAYS]) calendar days after execution, unless delayed by causes outside the control of AGENT, and shall proceed with subsequent work only on authorization by CITY. AGENT shall immediately submit to CITY in writing evidence of delay satisfactory to the

CITY'S reasonable discretion, upon which an extension of time equal to the period of actual delay, if approved by the CITY, shall be granted in writing.

**IV. INFORMATION AND SERVICES TO BE FURNISHED AGENT**

It is agreed that the CITY shall furnish, without charge, for the purpose of the Contract, information, data, reports, records, and maps as are existing and available for the carrying out of the work of the AGENT as outlined under "Scope of Services"; provided, however, the CITY makes no representation or warranty regarding the reliability of any such information, data, reports or maps. The CITY its agencies shall cooperate with the AGENT and will, to the fullest extent reasonably practicable, facilitate the performance of the work described in this Contract.

**V. COMPENSATION AND METHOD OF PAYMENT**

**A. COMPENSATION**

It is agreed that total fees for Basic Services for the work as described in Attachment A hereto shall not exceed the sum of \$[INSERT WRITTEN DOLLAR AMOUNT] Dollars and [INSERT WRITTEN CENTS] Cents (\$[INSERT # CONTRACT AMOUNT]) unless specifically authorized by the CITY.

**B. PAYMENT**

AGENT shall invoice CITY monthly for its services and charges incurred by AGENT for services performed under the direction and control of AGENT as described herein.

CITY agrees to pay AGENT at its office the full amount of each such invoice upon receipt or as otherwise specified in this Agreement. A charge of one percent per month shall be added to the unpaid balance of invoices not paid within thirty-one (31) days after date of invoice. The AGENT shall pay its subcontractors no later than the tenth day after he receives payment as required under Chapter 2251, Texas Local Government Code.

**VI. RECORDS**

AGENT shall keep accurate records, including time sheets and travel vouchers, of all time and expenses allocated to performance of Contract work. Such records shall be kept in the office of the AGENT for a period of not less than five (5) years and shall be made available to the CITY for inspection and copying upon reasonable request.

**VII. OWNERSHIP OF DOCUMENTS**

All documents, including original drawings, estimates, specifications, field notes and data are the property of CITY. AGENT may retain reproducible copies of drawings and other documents for its use.

All documents, including drawings prepared by AGENT are instruments of service in respect to the project. They are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by AGENT for the specific purpose intended shall be at CITY'S sole risk and without liability or legal exposure to AGENT.

**VIII. INSURANCE**

All insurance shall be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by CITY. The City of Friendswood, its officers, agents and employees shall be named as an additional Insured. The AGENT shall, at his own expense, purchase, maintain and keep in force insurance that shall protect against injury and/or damages which may arise out of or result from operations under this contract, whether the operations be by himself or by any agent, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, of the following types and limits (no insurance policy or certificate of insurance required below shall contain any aggregate policy year limit unless a specific dollar amount (or specific formula for determining a specific dollar amount) aggregate policy year limit is expressly provided in the specification below which covers the particular insurance policy or certificate of insurance):

- A.** Worker's Compensation Insurance (with Waiver of Subrogation in favor of the City of Friendswood, its officers, agents and employees), with statutory limits.
- B.** Commercial General Liability occurrence type insurance (No "XCU" restrictions shall be applicable). Products/completed operations coverage must be included.
  - 1.** Bodily injury five hundred thousand dollars (\$500,000) single limit per occurrence or five hundred thousand dollars (\$500,000) each person/ five hundred thousand dollars (\$500,000) per occurrence.
  - 2.** Property Damage one hundred thousand dollars (\$100,000) per occurrence.
  - 3.** Minimum aggregate policy year limit one million dollars (\$1,000,000).

- C.** Commercial Automobile Liability Insurance (including owned, non-owned and hired vehicles coverages).
- 1.** Minimum combined single limit of five hundred thousand dollars (\$500,000) per occurrence for bodily injury and property damage.
  - 2.** If individual limits are provided minimum limits are three hundred thousand dollars (\$300,000) per person, five hundred thousand dollars (\$500,000) per occurrence for bodily injury and one hundred thousand dollars (\$100,000) per occurrence for property damage.
- D.** Contractual Liability Insurance covering the indemnity provision of this contract in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Contract by date, job number and location.
- E.** AGENT also agrees to maintain Professional Liability Insurance coverage of one million dollars (\$1,000,000) minimum per occurrence/claim/policy year aggregate limits to protect the CITY against damages arising from the AGENT'S negligent or wrongful act or omission in the performance of services under this Contract. Coverage shall continue for a minimum of two years (2 Yr) after the AGENT'S assignment under this Contract is completed. The deductible on the policy for Professional Liability shall not exceed twenty-five thousand dollars (\$25,000) unless specifically approved by the CITY.

AGENT shall cause AGENTS insurance company or insurance agent to fill in all information required (including names of insurance agencies, AGENT and insurance companies, and policy numbers, effective dates and expiration dates, and provide proof that the CITY is an additional insured) and to date and sign and do all other things necessary to complete and make into a valid certificate of insurance the CERTIFICATE OF INSURANCE Form attached to and made a part of this Contract, and pertaining to the above listed Items A, B, C, D, and E; and before commencing any of the work and within the time otherwise specified, AGENT shall file said completed Form with the CITY. None of the provisions in said Form shall be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form contains a provision that coverages afforded under the policies shall not be altered, modified or cancelled unless at least fifteen days (15 D) prior written notice has been given to the CITY. AGENT shall also file with the CITY valid CERTIFICATE(s) OF INSURANCE on like form from or for all Subcontractors and showing the Subcontractor(s) as the Insured. Said completed CERTIFICATE OF INSURANCE Form(s) shall in any event be filed with CITY not more than ten days (10 D) after execution of this Contract.

**IX. PROFESSIONAL LIABILITY**

- A.** AGENT shall be responsible for the use and employment of reasonable skill and care befitting the profession in the data, reports and documents by AGENT for the Project covered by this Contract. Approval by CITY shall not constitute nor be deemed a release or waiver of the responsibility and liability of AGENT for the accuracy and competency of data, reports and documents.

**X. INDEMNIFICATION**

AGENT SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS, AND EMPLOYEES, HARMLESS FROM ANY CLAIMS, FINES, DEMANDS, LOSS, DAMAGE, SUIT, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, CAUSED BY THE NEGLIGENT, INTENTIONAL OR WILLFUL ACTS OR OMISSIONS OF THE AGENT, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACT LABORERS, OR SUBAGENTS IN THE PERFORMANCE OF THIS AGREEMENT.

AGENT SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS IN CONNECTION WITH THE SERVICES OF AGENT AND SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE ARISING OUT OF NONCOMPLIANCE WITH SUCH LAWS, RULES AND REGULATIONS, WITHOUT LIMITATION. AGENT SHALL ASSUME FULL RESPONSIBILITY FOR PAYMENTS OF FEDERAL, STATE AND LOCAL TAXES OR CONTRIBUTIONS IMPOSED OR REQUIRED UNDER THE SOCIAL SECURITY, WORKER'S COMPENSATION, AND INCOME TAX LAWS WITH RESPECT TO AGENT'S EMPLOYEES. FURTHER, AGENT SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGES, EXPENSES OR CLAIMS ARISING OUT OF ANY ACT OR OMISSION, INTENTIONAL TORT, OR FAILURE TO PAY A SUBAGENT OR SUPPLIER OF AGENT, ITS OFFICERS, AGENTS AND EMPLOYEES IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY AGENT OR AS A RESULT OF AGENT'S FAILURE TO USE AND EMPLOY REASONABLE SKILL AND CARE BEFITTING THE PROFESSION IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. FURTHER, AGENT SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGES, EXPENSES OR CLAIMS FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY AGENT IN THE PERFORMANCE OF THIS AGREEMENT.

THE FOREGOING INDEMNIFICATION PROVISION SHALL APPLY TO AGENT REGARDLESS OF WHETHER OR NOT SAID LIABILITY, LOSS, DAMAGES, EXPENSES, OR CLAIMS IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER.

THE AGENT SHALL REQUIRE ALL OF ITS APPROVED SUBAGENTS TO INCLUDE IN THEIR SUBCONTRACTS, A RELEASE AND INDEMNITY IN FAVOR OF THE CITY IN SUBSTANTIALLY THE SAME FORM AS ABOVE.

**XI. ADDRESS OF NOTICE AND COMMUNICATIONS**

<b>CITY:</b>	<b>AGENT:</b>
CITY OF FRIENDSWOOD	[INSERT AGENT NAME]
910 S. Friendswood Drive	[INSERT ADDRESS]
Friendswood, Texas 77546	[INSERT CITY, STATE, ZIP]
Attn: [INSERT CONTACT NAME]	Attn: [INSERT CONTACT NAME]
Title: [INSERT CONTACT TITLE]	Title: [INSERT CONTACT TITLE]

All notices and communications under this Contract shall be mailed or delivered to CITY and AGENT at the above addresses, respectively.

**XII. CAPTIONS**

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any Paragraph or in any way determine its interpretation or application.

**XIII. SUCCESSORS AND ASSIGNMENTS**

The CITY and the AGENT each binds themselves and their successors, executors, administrators, and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the CITY nor the AGENT shall assign, sublet, or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**XIV. TERMINATION OF CONTRACT FOR CAUSE**

If, through any cause, the AGENT shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the AGENT shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the AGENT of such termination and specifying the effective date thereof, at least five (5) days

before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, survey, drawings, maps, models, photographs, and reports prepared by the AGENT under this Contract shall become the property of the CITY, and the AGENT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the AGENT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Contract by the AGENT and the CITY may withhold any payment to the AGENT for the purpose of setoff until such time as the exact amount of damages due the CITY from the AGENT is determined.

**XV. TERMINATION FOR CONVENIENCE OF THE CITY**

The CITY may terminate this Contract at any time by giving at least thirty (30) days notice in writing to the AGENT. If the Contract is terminated by the CITY as provided herein, the AGENT shall be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the AGENT, other terms and conditions contained in Paragraph 14 of this Contract relative to termination shall apply.

**XVI. CHANGES**

The CITY may, from time to time, request changes in the scope of the services to be performed by the AGENT under this Contract. Such changes, including any increase or decrease in the amount of the AGENT'S compensation, which are mutually agreed upon by and between the CITY and AGENT shall be incorporated in written amendments to this Contract.

**XVII. PERSONNEL**

- A.** The AGENT represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.
- B.** All of the services required hereunder shall be performed by the AGENT or under its supervision and all personnel engaged in the work shall be fully qualified and, if applicable shall be authorized or permitted under State and local law to perform such services.
- C.** None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be subject to each provision of this Contract.

**XVIII. REPORTS AND INFORMATION**

The AGENT shall, at such times and in such forms as the CITY may require, furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

**XIX. CIVIL RIGHTS**

The AGENT shall comply with applicable requirements of Chapter 106 Civil Practice and Remedies Code of the State of Texas which prohibits discrimination on the grounds of race, religion, color, sex or national origin, while performing work on behalf of the CITY.

The AGENT shall carry out its work under this Contract in a manner that shall ensure full compliance by the CITY with the Statute.

**XX. INTEREST OF AGENT AND EMPLOYEES**

The AGENT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interests which would conflict in any manner or degree with the performance of its services hereunder.

The AGENT further covenants that in the performance of this Contract, no person who has any such interest shall be employed by the AGENT.

**XXI. INCORPORATION OF PROVISIONS REQUIRED BY LAW**

Each provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein and the Contract shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Contract shall be amended to make such insertion upon application by either party.

**XXII. PAYMENT BOND**

A payment bond shall be required for all sub-consultants, surveyors, geotechnical engineers and for all other professional services wherein the services are not performed by employees of the ENGINEER'S firm.

**XXIII. VENUE**

Any action brought by either party based on any claim arising under or as a result of this contract shall be brought in a court of competent jurisdiction in Galveston County, Texas.

**XXIV. TIME IS OF THE ESSENCE**

Time is of the essence for the completion of all work described in this contract. It is anticipated that all work will be completed within the time as stated in the Schedule from the date of execution, and that any delay in the completion of the work described herein shall constitute a breach of this contract.

**EXECUTED IN on behalf of the Professional Services Firm by [INSERT PROFESSIONAL REPRESENTATIVE] its [INSERT THEIR TITLE] shown below, and on behalf of the City by [INSERT CITY REPRESENTATIVE NAME], its [INSERT THEIR TITLE], thereto duly authorized this [INSERT DAY] day of [INSERT MONTH], [INSERT YEAR].**

**ACCEPTED:**

**PROPOSED AND AGREED TO:**

CITY:

PROFESSIONAL REPRESENTATIVE:

CITY OF FRIENDSWOOD, TEXAS

[INSERT PROFESSIONAL FIRM]

\_\_\_\_\_  
MAYOR

BY: \_\_\_\_\_  
[INSERT TITLE]

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
(OFFICER OR SECRETARY)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

**END OF DOCUMENT**