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# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**



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DOCUMENTS COMMITTEE

and

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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
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## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between  
\_\_\_\_\_  
City of Angleton (“City/Owner”) and  
\_\_\_\_\_  
KSA Engineers, Inc. (“Engineer”).  
\_\_\_\_\_  
(Collectively “the Parties”).

City's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

\_\_\_\_\_  
Lead and Copper Rule and Monitoring Plan - Phase 1 (“Project”).

Engineer's services under this Agreement are generally identified as follows:

\_\_\_\_\_  
Work with the City of Angleton and it's Stakeholders to produce a Lead Service Line Inventory as required by USEPA as part of updates to the Lead and Copper Rule as further detailed in Attachment A

City/Owner and Engineer further agree as follows:

### **ARTICLE 1 – SERVICES OF ENGINEER**

#### **1.01 Scope**

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Attachment A.

### **ARTICLE 2 – CITY/OWNER’S RESPONSIBILITIES**

#### **2.01 General**

- A. City/Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. City/Owner shall pay Engineer as set forth in Exhibit C.
- C. City/Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by

City/Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 *Commencement***

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### **3.02 *Time for Completion***

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Attachment A and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If City/Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. City/Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then City/Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 *Invoices***

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to City/Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. Invoices shall be forwarded to:

City of Angleton  
Attn: Financing Department  
121 S. Velasco  
Angleton, TX 77515

#### 4.02 *Payments*

- A. ~~*Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.~~
- B. *Failure to Pay:* If City/Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
- ~~amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and~~
- Engineer may, after giving seven days written notice to City/Owner, suspend services under this Agreement until City/Owner has paid in full all amounts due for services, expenses, and other related charges. City/Owner waives any and all claims against Engineer for any such suspension other than those amounts reasonably disputed.
- C. *Disputed Invoices:* If City/Owner contests an invoice, City/Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion. The Parties will use their best efforts to resolve the dispute expeditiously.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. City/Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

### ARTICLE 5 – OPINIONS OF COST

#### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If City/Owner requires greater assurance as to probable Construction Cost, City/Owner must employ an independent cost estimator as provided in Exhibit B.

#### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between City/Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the City/Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* City/Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in City/Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by City/Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and City/Owner shall comply with applicable Laws and regulations.
  - 2. Prior to the Effective Date, City/Owner provided to Engineer in writing any and all policies and procedures of City/Owner applicable to Engineer's performance of services under this Agreement. ~~provided to Engineer in writing.~~ Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and City/Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to City/Owner-provided written policies and procedures, may be the basis for modifications to City/Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. City/Owner agrees not to make resolution of any dispute

with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

- G. The general conditions for any construction contract documents prepared hereunder are to be the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) ~~unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.~~
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor’s furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer’s own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and City/Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and City/Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. ~~City/Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.~~

### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. City/Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. ~~If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.~~
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. City/Owner may make and retain copies of Documents for information and reference in connection with use on the Project by City/Owner. Engineer grants City/Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the City/Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) City/Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by City/Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at City/Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; ~~(3) City/Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer;~~ and (4) such limited license to City/Owner shall not create any rights in third parties.



- F. If Engineer at City/Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then City/Owner shall compensate Engineer at rates or in an amount to be agreed upon by City/Owner and Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause City/Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. City/Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." City/Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by City/Owner which are applicable to the Project.
- C. City/Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect City's/Owner's and Engineer's interests in the Project. City/Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. City/Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to City/Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, City/Owner may request that Engineer or its Consultants, at City's/Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by City/Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by City/Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

- A. Suspension:

By City/Owner: City/Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

By Engineer: Engineer may, after giving seven days written notice to City/Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

By either party upon 30 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.

By Engineer:

- 1) upon seven days written notice if City/Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
- 3) Engineer shall have no liability to City/Owner on account of such termination.

Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1-~~a~~ if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

For convenience,

By City/Owner effective upon Engineer's receipt of notice from City/Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination:

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice City/Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, City/Owner shall have the limited right to the use of Documents, at City's/Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. ~~In the event of termination by City/Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice City/Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using hourly methods and rates for Additional Services as set forth in Exhibit C.~~

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state ~~or jurisdiction in which the Project is located.~~ of Texas.
- B. Any controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled in the ~~federal and~~ state courts in Brazoria County, Texas.

6.07 *Successors, Assigns, and Beneficiaries*

- A. City/Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of City/Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of City/Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither City/Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City/Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City/Owner and Engineer and not for the benefit of any other party.

City/Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 *Dispute Resolution*

- A. City/Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

#### 6.09 *Environmental Condition of Site*

- A. City/Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. City/Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) City/Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until City/Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. City/Owner acknowledges that Engineer is performing professional services for City/Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless City/Owner, and City's/Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by City/Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. *Indemnification by City/Owner:* ~~To the fullest extent permitted by law, City/Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- C. ~~*Environmental Indemnification:* To the fullest extent permitted by law, City/Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate City's/Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of City/Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, City/Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

## 6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City/Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

*Additional Services* – The services to be performed for or furnished to City/Owner by Engineer under and amendment conforming with Exhibit K of the Agreement.

*Agreement* – This written contract for professional services between City/Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

*Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

*Basic Services* – The services to be performed for or furnished to City/Owner by Engineer ~~in accordance with Part 1 of Exhibit A of this Agreement.~~

*Construction Contract* – The entire and integrated written agreement between City/Owner and Contractor concerning the Work.

*Construction Cost* – The cost to City/Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; City's/Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to City/Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

*Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

*Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.

*Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

*Contractor* – The entity or individual with which City/Owner has entered into a Construction Contract.

*Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to City/Owner pursuant to this Agreement.

*Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

*Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

*Engineer* – The individual or entity named as such in this Agreement.

*Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

*Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

*City/Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is

the same individual or entity that will enter into any Construction Contracts concerning the Project.

*PCBs* – Polychlorinated biphenyls.

*Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

*Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

*Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

*Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

*Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

*Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by City/Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

*Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

*Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

*Site* – Lands or areas to be indicated in the Contract Documents as being furnished by City/Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City/Owner which are designated for the use of Contractor.

*Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.



*Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

*Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

*Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

*Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that City/Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, City’s/Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to City/Owner pursuant to Exhibit B of this Agreement.

*Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Exhibits Included:***

- A. Exhibit A, Not Included
- B. Exhibit B, City’s/Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Not Included
- E. Exhibit E, Not Included
- F. Exhibit F, Not Included
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.

- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Not Included
- K. Exhibit K, Amendment to Owner-Engineer Agreement form
- L. Exhibit L, Not Included
- M. Exhibit M, Not Included

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between City/Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and City/Owner shall designate specific individuals to act as Engineer's and City's/Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of City/Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

"corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

"fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of City/Owner, or (b) to deprive City/Owner of the benefits of free and open competition;

"coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Scanned Reproductions*

- A. The parties agree and stipulate that the original of this Agreement, including the signature page and any attachments, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original, may be used for any purpose just as if it were the original, including proof of the content of the original writing.

8.06 Force Majeure.

In the event either party is rendered unable, wholly or in part, by force majeure to carry-out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or similar civil disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and other incapacities of any party, whether similar or those enumerated or otherwise, which are not within the reasonable anticipation or control of the party claiming such inability, which such Party should not have avoided by the exercise of due diligence and care. If delays resulting from such causes increase the cost or time required by the Service Provider to perform the Services under this Agreement, the Service Provider shall be entitled to a reasonable adjustment in schedule and, if applicable and upon written agreement of the Parties, compensation.

8.07 Status as Independent Contractor.

The City and the Engineer are contractors independent of one another and neither party's employees will be considered the employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.

8.08 Public Information Act.

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Engineer agrees that this Agreement can be terminated if the Engineer knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code, Chapter 552, as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

In accordance with Section 2252.907 of the Texas Government Code, the Engineer is required to make any information created or exchanged with the City pursuant to this

Agreement, regardless of contrary provisions contained herein, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the City.

8.09 Work on City Premises.

Engineer will require that its employees and agents will, whenever on City premises, comply with all reasonable instructions and directions issued by the City.

8.10 Consultation, Reports.

The Engineer agrees to make available the Engineer's representative, who shall be mutually agreed upon by the Engineer and the City, for periodic meetings to review the progress of all work under this Agreement. The Engineer also shall prepare and submit to the City, when requested, a written report setting forth the status of such work in a format to be mutually agreed upon by the Engineer and the City, as well as copies of all documents relating to the Services performed by the Professional Service Provider.

8.11 No Israel Boycott.

The Engineer hereby verifies that it does not boycott Israel and will not boycott Israel through this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

8.12 Critical Infrastructure.

In accordance with Texas Government Code §2274.0102. Prohibited Contracts, Engineer verifies the following: (1) the company is not owned by or the majority of stock or other ownership interest of the company is not held by (a) individuals who are citizens of China, Iran, North Korea, Russia, or any other county designated to be a threat to critical infrastructure by the Governor of Texas; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or any other county designated to be a threat to critical infrastructure by the Governor of Texas; and (2) the company is not headquartered in China, Iran, North Korea, Russia, or any other county designated to be a threat to critical infrastructure by the Governor of Texas.

8.13 Foreign Terrorist Organizations.

The Engineer represents and warrants that it is not engaged in business with Iran,

Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

8.14 Immigration.

Engineer represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

8.15 Undocumented Workers.

Engineer certifies that they do not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Engineer is convicted of a violation under 8 U.S.C. § 1324a(f), Engineer shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the City notifies Engineer of the violation.

8.16 Nondiscrimination Against Firearm and Ammunition Industries.

Professional Service Provider verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

8.17 Anti-Boycott of Energy Companies.

Professional Service Provider verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

City/

Owner: City of Angleton

Engineer: KSA Engineers, Inc.

By: \_\_\_\_\_

By: 

Name: Jason Perez

Name: Joncie H. Young, P.E.

Title: Mayor

Title: Director of Client Services

Date Signed: \_\_\_\_\_

Date Signed: September 29, 2022

Engineer License or  
Firm's Certificate No. F-1356

State of: Texas

Address for giving notices:

121 S Velasco

Address for giving notices:

140 East Tyler Street

Angleton, TX

Suite 600

77515

Longview, TX 75601

Designated Representative (Paragraph 8.03.A):

Chris Whitakker

Designated Representative (Paragraph 8.03.A):

Angie Sanchez, P.E.

Title: City Manager

Title: Sr Project Manager

Phone Number: 979-849-4364

Phone Number: 281-494-3252 ext. 1407

Facsimile Number: \_\_\_\_\_

Facsimile Number: 888-224-9418

E-Mail Address: cwhitakker@angleton.tx.us

E-Mail Address: asanchez@ksaeng.com

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **City's/Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of City/Owner as set forth in this Agreement and unless otherwise provided in Attachment A, City/Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to City's/Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which City/Owner will require to be included in the Drawings and Specifications; and furnish copies of City's/Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

Property descriptions.

Zoning, deed, and other land use restrictions.

Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.

Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

- D. Give prompt written notice to Engineer whenever City/Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. ~~Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.~~

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as City/Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
  - Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - Legal services with regard to issues pertaining to the Project as City/Owner requires, Contractor raises, or Engineer reasonably requests.
  - Such auditing services as City/Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by City/Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to City's/Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for City/Owner so that Engineer may assist City/Owner in collating the various cost categories which comprise Total Project Costs.
- M. If City/Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent City/Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.



- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of City/Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to City/Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: None

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **Payments to Engineer for Services and Reimbursable Expenses**

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **ARTICLE 2 – CITY'S/OWNER'S RESPONSIBILITIES**

#### **C2.01 *Method of Payment***

- A. City/Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in Attachment C-1:
  - 1. Method A: Lump Sum
  - 2. Method B: Standard Hourly Rates

#### **C2.02 *Explanation of Methods***

##### **A. Method A – Lump Sum**

- 1. City/Owner shall pay Engineer a Lump Sum amount for the specified category of services.
- 2. The Lump Sum will include compensation for Engineer's services, services of Consultants, and reimbursable expenses, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- 3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

##### **B. Method B – Standard Hourly Rates**

- 1. For the specified category of services, the City/Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
- 2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
- 3. Engineer's Standard Hourly Rates and Reimbursable Expenses Schedule are attached to this Exhibit as Attachment C-2.

4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

#### *C2.03 Reimbursable Expenses*

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items. ~~in addition to those required under Exhibit A.~~ If authorized in advance by City/Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Attachment C-1 to this Exhibit C which shall be adjusted annually (as of the date of the Agreement) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 1.0.

#### *C2.04 Consultant Charges*

- A. The amount payable to Engineer for Additional Services performed by the Engineer's Consultants shall be equal to 1.15 times the consultant's charges for these services.

#### *C2.05 Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding, a rate of 1.5 times the witness's standard hourly rate will be assessed. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

#### *C2.06 Other Provisions Concerning Payment*

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services provided on the basis of hourly rates and reimbursable expenses are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give City/Owner written notice thereof. Promptly thereafter City/Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. City/Owner shall either agree to such compensation exceeding said estimated amount or City/Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before City/Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to City/Owner and shall be paid for all services rendered thereafter.

This is **Attachment C-1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

**Services and Fees**

Work Task	Study & Report Phase	Preliminary Design Phase	Final Design Phase	Bidding Phase	Construction Phase (See Note Two)	Commissioning Phase	Total	Payment Method (See Note 1)
Basic Services								Lump Sum
Lead Service Line Inventory							\$12,500.00	
<b>Subtotal</b>			\$0.00	\$0.00	\$0.00	\$0.00	\$12,500.00	

								Hourly Rate and Reimbursable Expenses
<b>Subtotal</b>								
<b>Total</b>			\$0.00	\$0.00	\$0.00	\$0.00		

Notes:

<sup>1</sup> Fees shown for services to be provided on the basis of Hourly Rates and Reimbursable Expenses are estimated only and are not considered lump sum or not-to-exceed values.

<sup>2</sup> Construction Phase Basic Service assumes a construction period of N/A consecutive calendar days. ENGINEER's work on this phase beyond the construction period will be billed at hourly rates.

This is **Attachment C-2 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services**, dated \_\_\_\_\_.

### **Hourly Rate and Reimbursable Expense Schedule**

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Rates for hourly work and reimbursable expenses effective on the date of this Agreement are:

Principal	\$270.00/hour
Senior Environmental Planner	\$220.00/hour
Environmental Planner	\$175.00/hour
Senior Aviation Planner	\$220.00/hour
Aviation Planner	\$180.00/hour
Senior Urban Design Planner	\$215.00/hour
Urban Design Planner	\$185.00/hour
Development Services Manager	\$195.00/hour
Electrical Engineer	\$175.00/hour
Electrical Design Engineer	\$145.00/hour
Mechanical Engineer	\$185.00/hour
Senior Project Manager	\$230.00/hour
Project Manager	\$175.00/hour
Senior Project Engineer	\$170.00/hour
Project Engineer	\$150.00/hour
Senior Design Engineer	\$130.00/hour
Design Engineer	\$115.00/hour
Senior Project Architect	\$215.00/hour
Project Architect	\$145.00/hour
Design Architect	\$105.00/hour
GIS Specialist	\$180.00/hour
Senior Engineering Technician	\$195.00/hour
Engineering Technician	\$105.00/hour
Senior Design Technician	\$125.00/hour
Design Technician	\$ 90.00/hour
Safety Manager	\$135.00/hour
Safety Specialist	\$100.00/hour
TCEQ Instructor	\$100.00/hour
Regulation Compliance Specialist	\$100.00/hour
Project Assistant	\$ 90.00/hour
Senior CAD Technician	\$ 90.00/hour
CAD Technician	\$ 85.00/hour
Senior Project Representative	\$110.00/hour
Senior Project Representative - After Hours	\$130.00/hour
Project Representative	\$ 95.00/hour
Project Representative - After Hours	\$115.00/hour
Graphic Designer	\$ 75.00/hour
Administrative Assistant	\$ 75.00/hour
Secretary	\$ 55.00/hour
Three-Man Survey Crew	\$195.00/hour
Two-Man Survey Crew	\$165.00/hour
Senior Registered Surveyor	\$175.00/hour
Registered Surveyor	\$140.00/hour
Senior Survey Technician	\$120.00/hour
Survey Technician	\$100.00/hour
Mileage	\$ 0.56/mile

ATV (4-Wheeler)	\$100.00/day
GPS	\$100.00/day
Reimbursable Expenses (Travel, Lodging, Copies, Printing)	Actual Cost
Outside Consultants	Cost + 15%

**NOTE: The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually as of January to reflect equitable changes in the compensation payable to Engineer.**

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**Insurance**

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Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

*G6.04 Insurance*

A. The limits of liability for the insurance required by Paragraphs 6.04.A and 6.04.B of the Agreement are as follows:

1. *By Engineer:*
  - a. Workers' Compensation: Statutory
  - b. Employer's Liability –
    - 1) Each Accident: \$500,000
    - 2) Disease, Policy Limit: \$500,000
    - 3) Disease, Each Employee: \$500,000
  - c. General Liability –
    - 1) Each Occurrence  
(Bodily Injury and Property Damage): \$1,000,000
    - 2) General Aggregate: \$2,000,000
  - d. Excess or Umbrella Liability –
    - 1) Each Occurrence: \$2,000,000
    - 2) General Aggregate: \$2,000,000
  - e. Automobile Liability –
    - 1) Combined Single Limit  
(Bodily Injury and Property Damage):  
Each Accident \$1,000,000
  - f. Professional Liability –



- |    |                        |             |
|----|------------------------|-------------|
| 1) | Each Claim Made:       | \$1,000,000 |
| 2) | Annual Aggregate:      | \$2,000,000 |
| g. | Other (specify): _____ | \$_____     |
2. *By Owner:*
- |    |  |             |
|----|--|-------------|
| a. | Workers' Compensation:   | Statutory   |
| b. | Employer's Liability –   |             |
| 1) | Each Accident  | \$500,000   |
| 2) | Disease, Policy Limit  | \$500,000   |
| 3) | Disease, Each Employee   | \$500,000   |
| c. | General Liability –  |             |
| 1) | General Aggregate:   | \$2,000,000 |
| 2) | Each Occurrence (Bodily Injury<br>and Property Damage):                        | \$1,000,000 |
| d. | Excess Umbrella Liability --   |             |
| 1) | Each Occurrence:   | \$2,000,000 |
| 2) | General Aggregate:   | \$2,000,000 |
| e. | Automobile Liability –   |             |
| 1) | Combined Single Limit<br>(Bodily Injury and Property Damage):<br>Each Accident | \$1,000,000 |
| f. | Other (specify): _____   | \$_____     |

~~B. Additional Insureds:~~

- ~~1. Engineer and the Consultants identified in the Task Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B.~~

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### *H6.08 Dispute Resolution*

- A. *Mediation:* City/Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation ~~by insert name of mediator, or mediation service~~. City/Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **Limitations of Liability**

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Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

### *A. Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to City/Owner and anyone claiming by, through, or under City/Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.
  
2. ~~*Exclusion of Special, Incidental, Indirect, and Consequential Damages:*~~ ~~To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to City/Owner or anyone claiming by, through, or under City/Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, and including but not limited to:~~

3. ~~*Agreement Not to Claim for Cost of Certain Change Orders:*~~ Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement (“Covered Change Orders”). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed \_\_\_\_\_% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer’s officers, directors, members, partners, agents, employees, and Consultants.
- B. ~~*Indemnification by City/Owner:*~~ To the fullest extent permitted by law, City/Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of City/Owner or City’s/Owner’s officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the City/Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No.**

*1. Background Data:*

- a. Effective Date of Owner-Engineer Agreement: \_\_\_\_\_
- b. Owner: City of Angleton
- c. Engineer: KSA Engineers, Inc.
- d. Project: Lead and Copper Rule - Phase 1

*2. Description of Modifications:*

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

**5. Agreement Summary (Reference only)**

- a. Original Agreement amount: \$ \_\_\_\_\_
- b. Net change for prior amendments: \$ \_\_\_\_\_
- c. This amendment amount: \$ \_\_\_\_\_
- d. Adjusted Agreement amount: \$ \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is \_\_\_\_\_.

OWNER: City of Angleton

ENGINEER: KSA Engineers, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Jason Perez

Name: \_\_\_\_\_

Title: Mayor

Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_