

**CITY OF GLEN ROSE**  
**PROFESSIONAL SERVICES PROCUREMENT PROCESS**

**STEP 1 - Determine the Scope of Services.** The City Administrator or his designee (Administrator) will identify the scope of work for a professional services or administration services contract and describe all the tasks that the City expects to be performed under the respective contract. The scope of work is to itemize the tasks needed, with timeframes and achievable goals as appropriate and will provide the basis for the Request for Proposals (RFP)/Request for Qualifications (RFQ) and services contracts.

**STEP 2 - Identify Selection Criteria.** The City will select professional service providers based on the criteria included in the attached rating sheets identified as Exhibit A (for Administrative and other Professional Services) and Exhibit B (for Engineering/Architectural/Surveying Services). The City Council (Council) has final authority to approve all professional services and administration services contracts.

**STEP 3 - Develop the Request for Proposals/Qualifications (RFP/RFQ) Package.** The Administrator shall develop an RFP (for Administrative and other Professional Services) or an RFQ (for Engineering/Architectural/Surveying Services) to issue to potential respondents.

**A. RFP for Administrative and other Professional Services Contracts other than Engineering/Architectural/Surveying Services.** The RFP should include the following components:

1. A clear description of the scope of services required, including specifications and attachments, and identification of the factors that will be used to evaluate proposals.
2. The Administrative Service Providers Rating Sheet (Exhibit A);
3. A Sample Contract (Exhibit D);
4. This Professional Services Procurement Process; and,
5. Requests for:
  - a. a statement of qualifications;
  - b. proposed cost of services/fee structure;
  - c. related experience with state and federal programs;

- d. capacity to perform the specific proposed task;
- e. experience in complying with Historically Underutilized Business and Disadvantaged Business Enterprise program requirements;
- f. documentation of completion of training required by the primary state or federal agency associated with a project, and,
- g. references – a list of past/current clients.

**B. RFQ for Engineering/Architectural/Surveying Services.** The RFQ should include the following components:

- 1. A clear description of the scope of services required, including specifications and attachments, and identification of the factors that will be used to evaluate proposals.
- 2. The Administrative Service Providers Rating Sheet (Exhibit B);
- 3. A Sample Contract (Exhibit E);
- 4. This Professional Services Procurement Process; and,
- 5. Requests for:
  - a. statement of qualifications;
  - b. work experience;
  - c. capacity to perform the specific proposed task;
  - d. technical expertise;
  - e. ability to meet schedules;
  - f. proximity to the area of the proposed work;
  - g. familiarity with the area of the proposed work; and,
  - h. references – list of past/current clients.

**STEP 4 - Appoint a local Selection Review Committee.** The Council shall appoint a three (3) member Selection Review Committee (Committee) consisting of one (1) Council member and two (2) City staff members, preferably the City Secretary and Administrator in the case of Administrative Service Providers and the Public Works Director and the Administrator in the case of Engineering Service Providers. The Committee shall identify service providers to which RFP/RFQ's are to be distributed

to and shall evaluate the responses received, using the provided rating sheets. The selection committee members shall have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings), and shall adhere to the conflict of interest policy pertaining to procurement procedures included as Exhibit C.

**STEP 5 - Advertise the RFP/RFQ.** In order to create competition for the work, the Administrator must advertise the RFP/RFQ in a locally distributed newspaper. The solicitation must be advertised once a week for two consecutive weeks and the date of the publication of the first solicitation must at least fourteen (14) days before the date of the public opening for RFPs or the deadline submission for RFQs. To document compliance with this requirement, a tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit for proof of advertising shall be obtained.

**STEP 6 - Send RFP/RFQ to at least Five (5) Individuals/Firms.** After receiving input from the Committee, the Administrator is to prepare a list of potential firms/individuals to which the RFP/RFQ is to be sent. In making their selections, Committee members are to be encouraged to use the list of certified Administrative Service Providers found on the Texas Department of Agriculture website, the Texas Comptroller of Public Accounts' Historically Underutilized Business (HUB) Directory found on its website, and/or the Texas Unified Certification Program (TUCP) DBE/ACDBE and TxDOT SBE Directory found on TxDOT's website. The Administrator is to send the RFP/RFQ package to a minimum of five (5) individuals/firms by email, fax, and/or return receipt mail, document the reasons for selecting such individuals/firms, and provide evidence of contacting said individuals/ firms. At least one of the firms must be listed in either the State Comptroller's HUB Directory or TUCP's Directory. The proposal deadline must allow at least 10 days after the RFP/RFQ was sent to these individuals/firms.

**STEP 7 - Secure an independent agency estimate.** The Administrator will secure an independent agency estimate for use in negotiations with the selected consultant.

**STEP 8 - Evaluate and Rate the Proposals.** After the proposal submission deadline, the Committee must rate the proposals received, using only the specific selection criteria identified in its RFP/RFQ. This selection process must be thorough, uniform, and well documented through the rating sheets identified in Step 2. The Committee should contact each Respondent's references and evaluate each respondent's experience, work performance, and capacity to perform.

**STEP 9 - Clear the Respondent for Federal Requirements.** The Administrator must check the service provider's status in the System for Award Management (SAM) to verify

the provider is eligible to participate in the contract if awarded (not suspended or debarred) ([www.SAM.gov](http://www.SAM.gov)). Eligibility of all businesses, and eligibility of all principals of the business must be verified through the SAM website prior to any formal action authorizing the award of a contract to the contractor.

**STEP 10 - Interview Two Highest Scoring Eligible Respondents.** The two respondents deemed eligible under Step 9 that received the highest total ratings from the Committee will be asked to participate in an interview before the Committee. The Committee members will rate the interviews and add that rating to the two finalist's previous ratings, to create final ratings.

**STEP 11 - Negotiate with the Selected RFQ Respondent.** With respect only to RFQ Respondents, the City Administrator will conduct negotiations with highest scoring Respondent identified in Step 9. The respondent will be given an opportunity to submit a best and final offer.

**STEP 12 - Contract Preparation.** Using Exhibits D or E, a contract will be prepared for execution by all parties. The final contract is to be reviewed and approved by the City Attorney prior to its being presented to the Council.

**STEP 13 – Administrator's Recommendation to the Council.** The City Administrator shall recommend that the contract be awarded to the highest scoring respondent. The Administrator's recommendation (the Recommendation), the Committee ratings, and the contract for services will be presented to the City Council, and the Council will be provided an opportunity to interview the Respondent.

**STEP 14 - Award Contract.**

The City Council may either accept the Recommendation and award the contract to the highest scoring Respondent, or reject the Recommendation. If the Recommendation is rejected, the City Council may request that a new RFP/RFQ be issued, or that the City Administrator return to Step 10 and enter into negotiations with one of the other respondents to the original RFP/RFQ. If the latter course of action is pursued, the City Council must provide justification for its action and that justification must be noted in the minutes of the City Council meeting at which the action is taken. The City shall only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The Award must meet the reasonable, responsive, and responsible tests according to federal procurement procedures:

- Reasonable - Refers to the most suitable, fit and appropriate respondent to accomplish the job in question.
- Responsible - Refers to the respondent that is able to fully perform the requirements of the contract and has the integrity and reliability that will assure good faith performance.
- Responsive - Refers to the respondent that has submitted a bid/proposal that fully conforms to the information requested in the RFP.

**STEP 15 - Execute and Distribute Contract.** Execute multiple original copies of the Contract and distribute as needed.

**STEP 16 - Send letters to Respondents Which Weren't Selected.** After the contract between the City and the successful Respondent has been fully executed, letters will be sent to other Respondents notifying them that the City has awarded the contract.

**STEP 17 - Submit Financial Interest Report within 30 days.** Submit the Financial Interest Report to [RELEVANT STATE AGENCY] within 30 days of executing the services contract or within 30 days of grant award, whichever occurs last.

**STEP 18 - Document Retention.** Documents associated with the procurement process shall be retained by the City Secretary for the length of time required by state law or by any government agency involved having a vested interest in the procurement process.

#### **GENERAL NOTES:**

Professional service procurements made under this process, whether for Administrative and other Professional Services or for Engineering/Architectural/Surveying Services, must comply with applicable portions of Chapter 252 of the Texas Local Government Code, Chapter 2254 of the Government Code, and the nepotism and conflict of interest provisions found in Chapter 573 of the Texas Government Code, Chapter 171 of the Texas Local Government Code, and Texas Grant Management Standards as promulgated by the Texas State Comptroller's Office .



**Exhibit "A"**

**Administration/Professional Services Rating Sheet**

Grant Recipient \_\_\_\_\_  
 Name of Respondent \_\_\_\_\_  
 Evaluator's Name \_\_\_\_\_

Grant Contract No. \_\_\_\_\_  
 Date of Rating \_\_\_\_\_

**Experience -- Rate the Respondent of the Request For Proposal (RFP) by awarding points up to the maximum listed for each factor. Information necessary to assess the Respondent on these criteria may be gathered either from past experience with the Respondent and/or by contacting past/current clients of the Respondent.**

**Experience**

| <u>Factors</u>                                                    | <u>Max.Pts.</u> | <u>Score</u> |
|-------------------------------------------------------------------|-----------------|--------------|
| 1. Related Experience / Background with federally funded projects | 10              | _____        |
| 2. Related Experience / Background with specific project type     | 5               | _____        |
| 3. Proof of completing agency specific training                   | 5               | _____        |
| 4. References from current/past clients                           | 10              | _____        |
| <b>Subtotal, Experience</b>                                       | <b>30</b>       | _____        |

**Work Performance**

| <u>Factors</u>                                                                | <u>Max.Pts.</u> | <u>Score</u> |
|-------------------------------------------------------------------------------|-----------------|--------------|
| 1. Submits requests to client/agencies in a timely manner                     | 5               | _____        |
| 2. Responds to client/agency requests in a timely manner                      | 5               | _____        |
| 3. Past client/agency projects completed on schedule                          | 5               | _____        |
| 4. Work product is consistently of high quality with low level of errors      | 5               | _____        |
| 5. Past client/agency projects have low level of monitoring findings/concerns | 5               | _____        |
| 6. Manages projects within budgetary constraints                              | 5               | _____        |
| <b>Subtotal, Performance</b>                                                  | <b>30</b>       | _____        |

**Capacity to Perform**

| <u>Factors</u>                                                         | <u>Max.Pts.</u> | <u>Score</u> |
|------------------------------------------------------------------------|-----------------|--------------|
| 1. Qualifications of Professional Administrators / Experience of Staff | 5               | _____        |
| 2. Present and Projected Workloads                                     | 5               | _____        |
| 3. Quality of Proposal/Work Plan                                       | 5               | _____        |
| 4. Demonstrated understanding of scope of this Grant Project           | 5               | _____        |
| <b>Subtotal, Capacity to Perform</b>                                   | <b>20</b>       | _____        |

**Proposed Cost**

| <u>Factors</u>                              | <u>Max.Pts.</u> | <u>Score</u> |
|---------------------------------------------|-----------------|--------------|
| A = Lowest Proposal \$ _____                |                 |              |
| B = Bidder's Proposal \$ _____              |                 |              |
| <b>A   B X 20 equals Respondent's Score</b> | <b>20</b>       | _____        |

**TOTAL SCORE**

| <u>Factors</u>        | <u>Max.Pts.</u> | <u>Score</u> |
|-----------------------|-----------------|--------------|
| * Experience          | 30              | _____        |
| * Work Performance    | 30              | _____        |
| * Capacity to Perform | 20              | _____        |
| * Proposed Cost       | 20              | _____        |
| <b>Total Score</b>    | <b>100</b>      | _____        |



**Exhibit "B"**

## Engineer/Architect/Surveyor Rating Sheet

Grant Recipient \_\_\_\_\_  
 Name of Respondent \_\_\_\_\_  
 Evaluator's Name \_\_\_\_\_

Grant Contract No. \_\_\_\_\_  
 Date of Rating \_\_\_\_\_

**Experience** -- Rate the respondent for experience in the following areas:

|                                                                                                                                                                                                                                            |  | <u>Comments</u> |              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------|--------------|
| <u>Factor</u>                                                                                                                                                                                                                              |  | <u>Max.Pts.</u> | <u>Score</u> |
| 1. Has previously designed _____ type of projects                                                                                                                                                                                          |  | 20              | _____        |
| 2. Has worked on federally funded construction projects                                                                                                                                                                                    |  | 10              | _____        |
| 3. Has worked on projects that were located in this general region.                                                                                                                                                                        |  | 10              | _____        |
| Note: Location for A/E (Architect/Engineer) may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 2 CFR 200.319(b) |  |                 |              |
| 4. Extent of experience in project construction management                                                                                                                                                                                 |  | 15              | _____        |
| 5. Current Certification of the Grant Agency's Project Implementation Training                                                                                                                                                             |  | 5               | _____        |
| <b>Subtotal, Experience</b>                                                                                                                                                                                                                |  | 60              | _____        |

**Work Performance**

| <u>Factor</u>                                    | <u>Max.Pts.</u> | <u>Score</u> |
|--------------------------------------------------|-----------------|--------------|
| 1. Past projects completed on schedule           | 10              | _____        |
| 2. Manages projects within budgetary constraints | 5               | _____        |
| 3. Work product is of high quality               | 10              | _____        |
| <b>Subtotal, Performance</b>                     | 25              | _____        |

NOTE: Information necessary to assess the respondent on these criteria should be gathered by contacting past/current clients.

**Capacity to Perform**

| <u>Factor</u>                                   | <u>Max.Pts.</u> | <u>Score</u> |
|-------------------------------------------------|-----------------|--------------|
| 1. Staff Level / Experience of Staff            | 5               | _____        |
| 2. Adequacy of Resources                        | 5               | _____        |
| 3. Professional liability insurance is in force | 5               | _____        |
| <b>Subtotal, Capacity to Perform</b>            | 15              | _____        |

**TOTAL SCORE**

| <u>Factor</u>         | <u>Max.Pts.</u> | <u>Score</u> |
|-----------------------|-----------------|--------------|
| * Experience          | 60              | _____        |
| * Work Performance    | 25              | _____        |
| * Capacity to Perform | 15              | _____        |
| <b>Total Score</b>    | 100             | _____        |



## **Exhibit "C"**

### **CONFLICT OF INTEREST POLICY FOR STATE AND FEDERALLY FUNDED GRANT PROJECTS**

As a Grant Recipient of a program administered by a state or federal agency, the City of Glen Rose shall avoid, neutralize or mitigate actual or potential conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the contract or impact the integrity of the procurement process.

For procurement of goods and services, no employee, officer, or agent of the City of Glen Rose shall participate in the selection, award, or administration of a contract supported by a federal or state agency's grant funds if he or she has a real or apparent conflict of interest. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

No officer, employee, or agent of the City of Glen Rose shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

For all other cases, no employee, agent, consultant, officer, or elected or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving a federal or state agency's grant funds, that has any grant funded project function/responsibility, or is in a position to participate in a decision-making process or gain inside information, may obtain a financial interest or benefit from the grant funded activity.

The conflict of interest restrictions and procurement requirements identified herein shall apply to a benefitting business, utility provider, or other third party entity that is receiving assistance, directly or indirectly, under a state or federally funded grant contract or award, or that is required to complete some or all work under the state or federally funded grant contract in order to meet the grant program's objectives.

Any person or entity including any benefitting business, utility provider, or other third party entity that is receiving assistance, directly or indirectly, under a state or federally funded grant contract or award, or that is required to complete some or all work under the state or federally funded grant contract in order to meet the grant program's objectives, that might potentially receive benefits from state or federally funded grant contract awards may not participate in the selection, award, or administration of a contract supported by that grant funding.

Any alleged violations of these standards of conduct shall be referred to the City of Glen Rose Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

**Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

\_\_\_\_\_  
Name of Mayor  
City of Glen Rose



EXHIBIT "D"

ADMINISTRATION/PROFESSIONAL SERVICES

PART I  
AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the CITY OF GLEN ROSE, hereinafter called the "City", acting herein by \_\_\_\_\_ hereunto duly authorized, and \_\_\_\_\_ hereinafter called "the Contractor", acting herein by \_\_\_\_\_.

WITNESSETH THAT:

WHEREAS, the City of Glen Rose desires to [implement/construct/etc.] the following: \_\_\_\_\_ [describe project] under the general direction of \_\_\_\_\_ Program administered by [RELEVANT STATE AGENCY] ; and,

WHEREAS, the City desires to engage \_\_\_\_\_ to render certain [professional /administration] services in connection with this [RELEVANT GRANT PROJECT], Contract Number \_\_\_\_\_.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services - The Contractor will perform the services set out in Part II, Scope of Services.
2. Time of Performance - The services of the Contractor shall commence on \_\_\_\_\_. In any event, all of the services required and performed hereunder shall be completed no later than \_\_\_\_\_.
3. Local Program Liaison - For purposes of this Contract, the City Administrator or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - The [RELEVANT FEDERAL AGENCY] , Inspectors General, the Comptroller General of the United States, the [RELEVANT STATE AGENCY] , and the City, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the [RELEVANT GRANT PROGRAM] award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City's [RELEVANT GRANT PROGRAM] contract with [RELEVANT STATE AGENCY].

## EXHIBIT "D"

5. Retention of Records - The Contractor shall retain all required records for three years after the City makes its final payment and all pending matters are closed.
6. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$ \_\_\_\_\_. Payment to the Contractor shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.
7. Indemnification - The Contractor shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against any and all claims, costs, suits, and damages, including attorneys' fees, arising out of the Contractor's performance or nonperformance of the activities, services or subject matter called for in this agreement or in connection with the management and administration of the [RELEVANT GRANT PROGRAM] contract, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.
8. Miscellaneous Provisions
  - a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Somervell County, Texas.
  - b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
  - c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
  - d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
  - e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to and incorporated into this Agreement.
9. Extent of Agreement

This Agreement, which includes Parts I-IV, [*and if applicable*, including the following exhibits/attachments: represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City and Contractor.

EXHIBIT "D"

**IN WITNESSETH WHEREOF**, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: \_\_\_\_\_  
(Local City Official)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
(Contractor's Authorized Representative)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)

## EXHIBIT "D"

### PART II

#### SCOPE OF SERVICES

The Contractor shall provide the following scope of services: *(choose contracted services)*

##### A. Project Management

1. Develop a recordkeeping system consistent with program guidelines, including the establishment of a filing system.
2. Maintenance of filing system.
3. Provide general advice and technical assistance to the City personnel on implementation of project and regulatory matters.
4. Assist in the procurement of professional consulting engineering services through the request for proposal process, if applicable, and as required by the [RELEVANT GRANT PROGRAM] regulations.
5. Furnish City with necessary forms and procedures required for implementation of project.
6. Assist the City in meeting all special condition requirements that may be stipulated in the contract between the City and [RELEVANT STATE AGENCY] .
7. Prepare and submit to [RELEVANT STATE AGENCY] documentation necessary for amending the [RELEVANT GRANT PROGRAM] contract.
8. Conduct re-assessment of environmental clearance for any program amendments.
9. Prepare and submit quarterly reports (progress and other as required).
10. Prepare Financial Information Report for City.
11. Establish procedures to document expenditures associated with local administration of the project.
12. Provide guidance and assistance to City regarding acquisition of property:
  - Submit required reports concerning acquisition activities to [RELEVANT STATE AGENCY] ;
  - Establish a separate acquisition file for each parcel of real property acquired;
  - Determine necessary method(s) for acquiring real property;
  - Prepare correspondence to the property owners for the City's signature to acquire the property or to secure an easement; and,
  - Assist the City in negotiation with property owner(s).
13. Maintain [RELEVANT GRANT PROGRAM] Property Management register for any property/equipment purchased or leased.
14. Serve as liaison for the City during any monitoring visit by staff representatives from either [RELEVANT STATE AGENCY] or the [RELEVANT FEDERAL AGENCY].

##### B. Financial Management

1. Assist the City in proving its ability to manage the grant funds to the state's audit division.
2. Assist the City in establishing and maintaining a bank account (Direct Deposit account) and/or separate local bank account, journals and ledgers.
3. Assist the City in submitting the required Accounting System Certification letter, Direct Deposit Authorization Form (if applicable), and/or Depository/Authorized Signatory form to [RELEVANT STATE AGENCY].

## EXHIBIT "D"

4. Prepare all fund drawdowns on behalf of the City in order to ensure orderly, timely payments to all contracting parties within the allotted time period.
5. Review invoices received for payment and file back-up documentation.
6. Provide general advice and technical assistance to City personnel on implementation of project and regulatory matters.
7. Assist the City in establishing procedures to handle the use of any [relevant grant program] program income.

### C. Environmental Review

1. Prepare environmental assessment.
2. Coordinate environmental clearance procedures with other federal or state agencies and interested parties responsible for implementing applicable laws.
3. Document consideration of any public comments.
4. Prepare any required re-assessment of environmental assessment.
5. Prepare Request for Release of Funds and certifications to be sent to [RELEVANT STATE AGENCY].

### D. Acquisition

1. Prepare required acquisition reports(s).
2. Obtain documentation of ownership for City-owned property and/or Right of Way (ROWs).
3. Maintain a separate file for each parcel of real property acquired.
4. Determine necessary method(s) for acquiring real property.
5. Prepare correspondence with property owners.
6. Assist City in negotiations with property owner(s).
7. Prepare required acquisition reports and submit to [RELEVANT STATE AGENCY] .

### E. Construction Management

1. Establish procedures to document expenditures associated with local construction of the project (if force account is applicable).
  - Assist City in determining whether and/or what [RELEVANT GRANT PROGRAM] contract activities will be carried out in whole or in part via force account labor.
  - Assist City in determining whether or not it will be necessary to hire temporary employees to specifically carry out [relevant grant program] contract activities.
  - Assist City in maintaining adequate documentation of personnel, equipment and materials expended/used and their costs.
2. Assist City in documenting compliance with all federal and state requirements related to equal employment opportunity.
3. Assist City in documenting compliance with all federal and state requirements related to minimum wage and overtime pay requirements.
4. Provide assistance to or act as local labor standards officer. Notify [RELEVANT STATE AGENCY] in writing of name, address, and phone number of appointed labor standards compliance officer.
5. Request wage rates from [RELEVANT STATE AGENCY].
6. Provide sample [relevant grant program] contract documents to engineer.
7. Advertise for bids.

## EXHIBIT "D"

8. Make ten-day call to [RELEVANT STATE AGENCY] .
9. Verify construction contractor eligibility with [RELEVANT STATE AGENCY] .
10. Review construction contract.
11. Conduct pre-construction conference and prepare minutes.
12. Submit any reports of additional classification and rates to [RELEVANT STATE AGENCY] .
13. Issue Notice of Start of Construction to [RELEVANT STATE AGENCY] .
14. Review weekly payrolls, including compliance follow-ups. Conduct employee interviews.
15. Process change orders approved by City and the project engineer and submit to [RELEVANT STATE AGENCY] prior to execution with the construction contractor.
16. Obtain Certificate of Construction Completion/Final Wage Compliance Report and submit to [RELEVANT STATE AGENCY] .
17. Provide general advice and technical assistance to City personnel on implementation of project and regulatory matters.

### I. Audit / Close-out Procedures

1. Prepare the final Project Completion Report, including the General Report, Final Financial Interest Report, and any required documentation regarding Certificate of Completion.
2. Assist City in resolving any monitoring and audit findings.
3. Assist City in resolving any third party claims.
4. Provide auditor with [relevant grant program] audit guidelines.

## EXHIBIT "D"

### PART III PAYMENT SCHEDULE

City shall reimburse (Contractor) for management/administrative services provided for completion of the following project milestones per the following percentages of the maximum contract amount:

| Milestone / Task                                           | % of Contract Fee |
|------------------------------------------------------------|-------------------|
| • Establishment of Recordkeeping System                    | 5%                |
| • Completion of Environmental/Special Conditions Clearance | 15%               |
| • Completion of all Acquisition Activities                 | 10%               |
| • Completion of the Bid/Contract Award Process             | 15%               |
| • Labor Standards Compliance/Completion of Construction    | 15%               |
| • Comply with EEO                                          | 10%               |
| • Program and Financial Management                         | 20%               |
| • Filing of all Required Close-out Information             | 10%               |
| Total                                                      | 100%              |

**NOTE:** Percentages of payment listed here are guidelines based on management services typically provided. The payment schedule should be tied directly to the actual Scope of Work identified in Part II - Administrative Scope of Services. Localities may also opt to reimburse Professional Services Contracts on an hourly basis.

## EXHIBIT "D"

### PART IV TERMS AND CONDITIONS

1. Termination for Cause. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City, be turned over to the City and become the property of the City. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of contract by the Contractor, and the City may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

2. Termination for Convenience of the City. The City may at any time and for any reason terminate Contractor's services and work at City's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

[Parties should include the manner by which such termination will be effected and the basis for settlement or any other terms and conditions concerning payment upon such termination.]

3. Changes. The City may, from time to time, request changes in the services the Contractor will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or [relevant grant program] program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to

## EXHIBIT "D"

both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. Personnel.

- a. The Contractor represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
- b. All of the services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement 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 Agreement.

6. Assignability. The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

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

8. Records and Audits. The Contractor shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

## EXHIBIT "D"

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Contractor under this contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
11. Compliance with Local Laws. The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
  - a. Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of the [relevant grant program] award between [RELEVANT STATE AGENCY] and the City shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
  - b. Other Local Public Officials. No other public official who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the [relevant grant program] award between [RELEVANT STATE AGENCY] and the City shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
  - c. Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the [RELEVANT GRANT PROGRAM] award between [RELEVANT STATE AGENCY] and the City or this Agreement. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the [relevant grant program] award between [RELEVANT STATE AGENCY] and the City or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Debarment and Suspension (Executive Orders 12549 and 12689). The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal"

## EXHIBIT "D"

for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

### **Federal Civil Rights Compliance.**

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000). During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the

## EXHIBIT "D"

Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT "E"

Sample Contract

ENGINEERING/ARCHITECTURAL/SURVEYOR SERVICES

PART I  
AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the **CITY OF GLEN ROSE**, hereinafter called the "City", acting herein by \_\_\_\_\_ hereunto duly authorized, and \_\_\_\_\_ hereinafter called "Firm," acting herein by \_\_\_\_\_.

WITNESSETH THAT:

WHEREAS, the City desires to [implement/construct/etc.] the following: \_\_\_\_\_ [describe project] under the general direction of the [RELEVANT GRANT] Program administered by the [RELEVANT STATE AGENCY] ; and ,

WHEREAS the City desires to engage \_\_\_\_\_ to render certain engineering/surveyor/architectural services in connection with the [RELEVANT GRANT PROGRAM] Project, Contract Number \_\_\_\_\_.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services - The Firm will perform the services set out in Part II, Scope of Services.
2. Time of Performance - The services of the Firm shall commence on \_\_\_\_\_. In any event, all of the services required and performed hereunder shall be completed no later than \_\_\_\_\_.
3. Local Program Liaison - For purposes of this Agreement, the City Administrator or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Firm. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - The [RELEVANT FEDERAL AGENCY] , Inspectors General, the Comptroller General of the United States, the [RELEVANT STATE AGENCY] , and the City or any of their authorized representatives, shall have access to any documents, papers, or

## EXHIBIT "E"

other records of the Firm which are pertinent to the [RELEVANT GRANT PROGRAM] award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City's [RELEVANT GRANT PROGRAM] contract with [RELEVANT STATE AGENCY].

5. Retention of Records - The Firm shall retain all required records for three years after the City makes its final payment and all pending matters are closed.
6. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$ \_\_\_\_\_. Payment to the Firm shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule \_\_\_\_\_ of \_\_\_\_\_ this \_\_\_\_\_ Agreement.
7. Indemnification – The Firm shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against any and all claims, costs, suits, and damages, including attorney's fees, arising out of the Firm's performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.
8. Miscellaneous Provisions
  - a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Somervell County, Texas.
  - b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
  - c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
  - d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
  - e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.
9. Extent of Agreement

This Agreement, which includes Parts I-V, *[and if applicable, including the following exhibits/attachments: ]* represents the entire and integrated agreement between the City and

EXHIBIT "E"

the Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City and the Firm.

**IN WITNESSETH WHEREOF**, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: \_\_\_\_\_  
(Local City Official)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
(Firm/Contractor's Authorized Representative)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

## EXHIBIT "E"

### PART II SCOPE OF SERVICES

The Firm shall render the following professional services necessary for the development of the project: *(Choose appropriate contracted services)*

#### SCOPE OF SERVICES

1. Attend preliminary conferences with the City regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWS) for the \_\_\_\_\_ project and, if applicable, furnish to the City:
  - a. Name and address of property owners;
  - b. Legal description of parcels to be acquired; and
  - c. Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the City's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare a preliminary engineering/architectural study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the City, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Firm's recommendations; to be completed within \_\_\_\_\_ days of execution of this Agreement.
6. Furnish the City copies of the preliminary report, if applicable (additional copies will be furnished to the City at direct cost of reproduction).
7. Make periodic visits, no less than every 30 days during the construction period, to the construction site to observe the progress and quality of the work, to ensure that the work conforms with the approved plans and specifications, and to determine if the work is proceeding in accordance with the Agreement.
8. Furnish the City a written monthly status report at least seven (7) days prior to the regularly scheduled council meeting until the project is closed by [RELEVANT STATE AGENCY]. The format for this report is attached to this Agreement as Exhibit 1.
9. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
10. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Firm shall also furnish to the City an updated written Estimate of Probable Costs for the Project.
11. Make 10-day call to confirm prevailing wage decision.

## EXHIBIT "E"

12. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
13. Conduct bid opening and prepare minutes.
14. Tabulate, analyze, and review bids for completeness and accuracy.
15. Accomplish construction contractor's eligibility verification through [www.SAM.gov](http://www.SAM.gov).
16. Conduct pre-construction conference and prepare copy of report/minutes.
17. Issue Notice to Proceed to construction contractor.
18. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
19. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.
20. Use [RELEVANT STATE AGENCY] -approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
21. Consult with and advise the City during construction; issue to contractors all instructions requested by the City; and prepare routine change orders if required, at no charge for engineering services to the City when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by City and the Firm and submit to [RELEVANT STATE AGENCY] for approval prior to execution with the construction contractor.
22. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
23. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.
24. Based on the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
25. Recommend that a 5% retainage is withheld from all payments on construction contracts until final acceptance by the City and approval by [RELEVANT STATE AGENCY], unless State or local law provides otherwise.
26. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
27. Conduct interim/final inspections.
28. Revise contract drawings to show the work as actually constructed, and furnish the City with a set of "record drawings" plans.
29. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as a flash drive, which are compatible with computer systems

## EXHIBIT "E"

owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

### SUBCONTRACTS

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing, from the City.
2. The Firm shall, prior to proceeding with the work, notify the City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.
4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to [RELEVANT STATE AGENCY] and to the Regional Office of the Environmental Protection Agency (EPA).
5. The Firm will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement..
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
  - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
  - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
  - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);

## EXHIBIT "E"

- d. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - e. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
  9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City, [RELEVANT STATE AGENCY], the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the [RELEVANT FEDERAL AGENCY], or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
  10. The Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the City has made final payment to the contractor and all other pending matters are closed.

### STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Firm and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.
2. The Firm represents that services provided under this Agreement shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Firm's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Firm's expense if the deficiency is due to Firm's negligence. The City shall notify the Firm in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City under applicable state or federal law.
4. The Firm agrees to and shall hold harmless the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Firm, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Firm doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.

## EXHIBIT "E"

### PART III PAYMENT SCHEDULE

City shall reimburse the Firm for professional services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

| Milestone                                                                       | % of Contract Fee |
|---------------------------------------------------------------------------------|-------------------|
| • Approval of Preliminary Engineering Plans and Specifications by City.         | 20%               |
| • Approval of Plans and Specifications by Regulatory Agency(ies).               | 30%               |
| • Completion of bid advertisement and contract award.                           | 20%               |
| • Completion of construction staking.                                           | 10%               |
| • Completion of Final Closeout Assessment and submittal of "As Builts" to City. | 10%               |
| • Completion of final inspection and acceptance by the City.                    | 10%               |
| <b>Total</b>                                                                    | <b>100%</b>       |

**NOTE:** Percentages of payment listed here are general guidelines based on engineering services typically provided. These are negotiable, and should serve only as a guide. Payment schedule should be tied directly to the actual Scope of Work identified in Part II - Scope of Services.

#### SPECIAL SERVICES

Special Services shall be reimbursed under the following hourly rate schedule: (List all applicable services to include overhead charge).

|                         |    |
|-------------------------|----|
| Registered Surveyor     | \$ |
| Survey Crew (3 members) | \$ |
| Project Engineer        | \$ |
| Engineering Technician  | \$ |
| Project Representative  | \$ |
| Draftsman               | \$ |

The fee for all other Special Services shall not exceed a total of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_). The payment for these Special Services shall be paid as a lump sum, per the following schedule:

1. The Firm shall be paid upon completion of surveying, necessary field data, and acquisition data, if applicable, the sum of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).
2. The Firm shall be reimbursed the actual costs of necessary testing based on itemized billing statements from the independent testing laboratory, plus a \_\_\_\_\_ percent (\_\_\_\_%)

## EXHIBIT "E"

overhead charge. All fees for testing shall not exceed a total of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).

3. The payment requests shall be prepared by the Firm and be accompanied by such supporting data to substantiate the amounts requested.
4. Any work performed by the Firm prior to the execution of this Agreement is at the Firm's sole risk and expense.

## EXHIBIT "E"

### **PART IV TERMS AND CONDITIONS**

1. Termination of Agreement for Cause. If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City, be turned over to the City and become the property of the City. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Firm, and the City may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.

2. Termination for Convenience of the City.

City may at any time and for any reason terminate Contractor's services and work at City's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

[Parties should include the manner by which such termination will be effected and the basis for settlement or any other terms and conditions concerning payment upon such termination.]

3. Changes. The City may, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or \_\_\_\_\_ program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration

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Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

### 5. Personnel.

- a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
- b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement 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 Agreement.

### 6. Assignability. The Firm shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Firm from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

### 7. Reports and Information. The Firm, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

### 8. Records and Audits. The Firm shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

### 9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made

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available to any individual or organization without the prior written approval of the City.

10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.
11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
  - a. Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of \_\_\_\_\_ award between [RELEVANT STATE AGENCY] and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
  - b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the \_\_\_\_\_ award between [RELEVANT STATE AGENCY] and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
  - c. The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the \_\_\_\_\_ award between [RELEVANT STATE AGENCY] and the City or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the \_\_\_\_\_ award between [RELEVANT STATE AGENCY] and the City or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Debarment and Suspension (Executive Orders 12549 and 12689)

The Firm certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Firm. The Firm understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise

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excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

### **Federal Civil Rights Compliance.**

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000).

During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Firm will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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- e. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - f. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - g. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.
15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
16. Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
17. Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

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18. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000). The Firm certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

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**PART V  
PROJECT TIME SCHEDULE  
ENGINEERING/ARCHITECTURAL/SURVEYOR  
PROFESSIONAL SERVICES**

***INSERT YOUR OWN TIME SCHEDULE***