

PROFESSIONAL SERVICES AGREEMENT
Between
THE CITY OF MONTGOMERY, TEXAS
And
WARD, GETZ & ASSOCIATES, LLP

The CITY OF MONTGOMERY, TEXAS, as CLIENT (also referred to herein as the “City”), engages WARD, GETZ & ASSOCIATES, LLP, as ENGINEER, to perform professional services for the assignment described as follows:

General engineering consultation; general administrative and engineering assistance for the operation of the City; evaluation of existing facilities; review of water, sanitary sewer, storm sewer, pavement or drainage system problems; review of plans, studies, and plats for developments within the City; preparation of feasibility studies for proposed developments within the City; preparation of construction drawings and specifications for water plants, wastewater treatment plants, pavement or utilities; preparation of waste discharge permit applications; contract administration during construction; attendance of meetings of the City Council, Planning & Zoning Commission, and Montgomery Economic Development Corporation as required, and the and any additional engineering services requested by CLIENT.

- I. SERVICES: ENGINEER agrees to perform the design work for CLIENT as a part of ENGINEER’S Basic Services. Platting, Field Surveys, Resident Project Representation, and Reimbursable Expenses will be considered Additional Services. Basic Services and Additional Services will be performed in conformance with the following descriptions, terms, and conditions.
 - A. BASIC SERVICES: ENGINEER will perform these services in three phases.
 1. Preliminary Phase: ENGINEER will discuss the assignment with CLIENT; arrange for surveys, soil borings, investigations, and tests for CLIENT’S account, as required; prepare preliminary drawings and preliminary construction cost estimates; and present recommendations.
 2. Design Phase: After completion of Preliminary Phase and when authorized by CLIENT, ENGINEER will arrange for additional surveys, soil borings, investigations, and tests for CLIENT’S account, as required; prepare final contract drawings in ink on Mylar, specifications, and cost estimates; obtain necessary approvals from applicable federal, state, and local agencies; and prepare necessary bidding documents.
 3. Construction Phase: After completion of Design Phase and when authorized by CLIENT, ENGINEER will assist CLIENT in securing and analyzing bids or negotiated proposals, recommend awards of construction contracts, and consult with CLIENT during construction; transmit instructions of CLIENT to Contractor; periodically visit construction site to observe progress and quality of work; interpret drawings and specifications; review shop drawings, material and equipment tests, and Contractor’s pay estimates; observe the completed construction for conformity to contract documents; and issue to CLIENT a Certificate of Substantial Completion at which time Basic Services shall be deemed complete.

- B. **ADDITIONAL SERVICES:** All work performed by ENGINEER which is either described in this paragraph or not included in the Basic Services defined above shall constitute Additional Services. These shall include:
1. Travel and subsistence to points other than ENGINEERS or CLIENTS offices and project site;
 2. Copies of construction documents in excess of five (5) sets;
 3. Revisions to substantially completed construction documents or approved preliminary documents occasioned by changes in scope of work;
 4. Soil borings; soil, mill, shop, and laboratory tests;
 5. Field surveys, construction staking, lot staking, and related office computations and drafting;
 6. Resident project representation;
 7. Special reports or studies, bond application reports, property maps, plats, preparation of environmental statements, applications for permits or grants, appearances before regulatory agencies, and required filing fees;
 8. Revisions to construction documents to indicate "Record" conditions;
 9. Services as an expert witness including preparation of engineering data and reports on behalf of the CLIENT or in connection with litigation or other controversies, or in consultation with CLIENT or attorneys;
 10. Renderings, exhibits, or scale models;
 11. Additional or extended services during construction made necessary by work damaged by fire or other cause during construction; defective or neglected work of contractor; prolongation of construction contract time by more than 20%, acceleration of work schedule involving services beyond normal working hours; or default under construction contract due to delinquency or insolvency;
 12. Services after issuance of Certificate of Substantial Completion;
 13. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by CLIENT; not related to an ongoing construction project
 14. Other services not otherwise included in the Agreement or not customarily furnished in accordance with generally accepted engineering practice; and
 15. Storm water pollution prevention plans.

II. COMPENSATION: CLIENT agrees to pay ENGINEER for above-described services in accordance with the following descriptions, definitions, terms, and conditions.

A. BASIC SERVICES: Compensation for new projects in excess of \$600,000 Total Construction Cost will be an amount equal to a fixed percentage of the Total Construction Cost (as outlined below) for the services in each phase as schedule below:

| | |
|--------------------|--------------|
| PRELIMINARY PHASE | 1.25% |
| DESIGN PHASE | 5.50% |
| CONSTRUCTION PHASE | <u>1.25%</u> |
| TOTAL | 8.00% |

provided, however, that when the ENGINEER is authorized to design pavement compensation for these projects in excess of \$600,000 Total Construction Cost will be an amount equal to a fixed percentage of the Total Construction Cost (as outlined below) for the services in each phase as scheduled below:

| | |
|--------------------|--------------|
| PRELIMINARY PHASE | 1.00% |
| DESIGN PHASE | 4.00% |
| CONSTRUCTION PHASE | <u>1.00%</u> |
| TOTAL | 6.00% |

For projects with less than \$600,000 Total Construction Cost, the ENGINEER will be compensated on an hourly basis as shown on the attached SCHEDULE OF HOURLY RATES. CLIENT will be provided a schedule of rates for any services rendered which are not included in the attached SCHEDULE OF HOURLY RATES.

All projects may be negotiated on a lump sum, hourly, percent fee, or other billing structure by separate proposal. CLIENT or ENGINEER may propose an alternate billing structure for any project prior to authorization.

1. Total Construction Cost

- a. Total Construction Cost shall be based on and include, among others, the following items: (1) all work designed and specified by ENGINEER, including labor, material, and equipment (including work covered by additive alternates that increase the cost of the project, if used); and (2) all labor, material, and equipment furnished CLIENT or by others.
- b. Total Construction Cost shall not be based on nor include: (1) compensation payable to ENGINEER under this agreement; (2) compensation payable to any architect or other engineer, or (3) expenditures not connected with construction or design, such as land acquisition costs or attorney's fees.
- c. Total Construction Cost shall be: (1) the actual cost to the CLIENT of the finished project, if there is reasonably adequate information from which such cost amount can be determined, plus the amount of the proposal received from the successful bidder for each additive alternate not used (or

the ENGINEER'S most recent cost estimate for such alternate, if no proposal is received); (2) if reasonably adequate information is not available from which actual cost can be determined, then the lowest bona fide proposal received for construction of the project, including all additive alternates of that proposal; (3) if such a proposal is not available, then the ENGINEER'S most recent cost estimate for the project including all additive alternates. In determining Total Construction Cost, reduction shall not be made for any deductive alternates that decrease the cost of the project if used.

- B. **ADDITIONAL SERVICES:** Compensation will be on the basis of ENGINEER'S current hourly rates, plus Reimbursable Expenses, both defined as follows:
1. **Hourly Rates:** Charges for hourly services will be made in accordance with the attached SCHEDULE OF HOURLY RATES. Hourly rates are subject to annual revision in June of each year that this Agreement is in force. CLIENT will be provided a schedule of rates for any services rendered which are not included in the basic SCHEDULE OF HOURLY RATES.
 2. **Reimbursable Expenses:** Expenses shall include transportation and subsistence, cost of ENGINEER'S field office, reproduction, computer services, subcontracts, surveying expenses, and similar items. Reimbursable expenses are subject to annual revision in January of each year that this Agreement is in force. Such expenses shall be reimbursed in accordance with the attached SCHEDULE OF REIMBURSABLE EXPENSES.
- C. **LUMP SUM:** CLIENT and ENGINEER may agree in a letter proposal or proposals that certain services will be compensated on a lump sum basis.
- D. **CITY COUNCIL, PLANNING AND ZONING COMMISSION, AND MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION MEETING ATTENDANCE:** Compensation for attendance of meetings shall be as follows:
1. There will be no additional charge to the City for attendance of 1 meeting of the City Council and 1 meeting of the Planning and Zoning Commission per month.
 2. For all other meetings of the City Council, Planning and Zoning Commission, or Montgomery Economic Development Corporation, the time for attendance of those meeting shall be billed hourly for the duration of the meeting (Call to Order to Adjournment). The amount billed will be based on the lowest level licensed engineer in attendance of the meeting.
 3. If during any of the meetings of City Council, Planning and Zoning Commission, or Montgomery Economic Development Corporation, there is time spent to present and discuss items related to specific developments within the City, the time spent on those items will be billed toward the developers respective Escrow Account with the City. The time billed against the escrow account will be for the lowest level licensed engineer in

attendance for the meeting for only the time spent specifically discussing those respective items. The minimum time charge for a developer related item will be 15 minutes.

4. There will be no hourly charge for time spent traveling to and from the meeting.
- III. **PAYMENTS:** ENGINEER will invoice CLIENT monthly in amounts based on ENGINEER'S estimate of the portion of the Basic Services completed, plus charges for Additional Services performed. CLIENT agrees to promptly pay ENGINEER at its office in Harris County, Texas, the full amount of each such invoice upon receipt, Except for the deferred payments as set forth above, a charge of 0.75% per month will be added to the unpaid balance of invoices not paid within 30 days after date of invoice.
 - IV. **OWNERSHIP OF DOCUMENTS:** All documents, including original drawings, estimates, specifications, field notes, and data are and shall remain the property of the CLIENT. ENGINEER may, at its sole expense, retain a set of reproducible record copies of drawings and other documents. CLIENT agrees that it will use such documents solely in connection with the project(s) covered by this Agreement and for no other purpose. ENGINEER agrees to maintain all such documents in accordance with the requirements of the Texas Local Government Records Act and all rules, regulations, policies and retention schedules adopted thereunder.
 - V. **COST ESTIMATES:** Cost Estimates prepared by ENGINEER represent its best judgment as a design professional familiar with the construction industry. It is recognized, however, that the ENGINEER has no control over the cost of labor, materials, or equipment; over the contractor's methods of determining bid prices; or over competitive bidding or market conditions. Accordingly, the ENGINEER cannot and does not guarantee that bids will not vary from any cost estimate prepared by ENGINEER.
 - VI. **INSURANCE:** ENGINEER assumes all risks, hazards and liabilities encountered in the performance of this Agreement. ENGINEER agrees to maintain Workers' Compensation Insurance to cover all of its own personnel engaged in performing services for CLIENT under this Agreement. Furthermore ENGINEER agrees to maintain Professional Liability, Comprehensive General Liability and Comprehensive Automobile Liability Insurance in an amount not less than \$500,000. CLIENT shall be named as additional insured on General and Automobile liability policies, and ENGINEER shall make sure that the insurance carrier shall provide CLIENT with thirty (30) days advance written notice of any change, cancellation or termination of coverage. ENGINEER shall provide CLIENT current certificates evidencing such insurance.
 - VII. **LIABILITY LIMITATION:**
 - A. The ENGINEER agrees to carry out and perform the services herein agreed to in a professional and competent manner. The CLIENT agrees that the ENGINEER shall not be liable for error, omission, or breach of warranty (either expressed or implied) in its preparation of designs and drawings, preparation of surveys, designation and selection of

materials and equipment for the project, or the performance of any other services in connection with any assignment for which specific authorization is given by the CLIENT pursuant to Section I of this Agreement, except to the extent that ENGINEER fails to exercise the usual degree of care and judgment of an ordinarily prudent engineer in the same or similar circumstances and conditions.

- B. **ENGINEER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT FROM LOSS, COST, EXPENSE, OR LIABILITY THAT THE CLIENT MAY INCUR OR SUFFER AS A RESULT OF ANY INFRINGEMENT INCURRED BY A DECISION MADE SOLELY BY THE ENGINEER OF THE PATENT OR COPYRIGHT LAWS OF THE UNITED STATES OR OTHER COUNTRY FOR WHICH CLIENT IS HELD LIABLE.**
- C. **ENGINEER SHALL PROTECT, INDEMNIFY AND SAVE CLIENT HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF ANY KIND AND CHARACTER INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES ON ACCOUNT OF INJURIES OR DAMAGES TO ANY PERSON OR PROPERTY IN ANY WAY ARISING OUT OF OR RELATING TO WORK UNDER THIS AGREEMENT, INCLUDING INTENTIONAL, WILLFUL OR NEGLIGENT ACTS OR OMISSIONS BY ENGINEER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ENGINEER OR ANYONE FOR WHOSE ACTS ENGINEER MAY BE LIABLE.**

VIII. TERMINATION

- A. **CONDITION OF TERMINATION:** This Agreement may be terminated without cause at any time prior to completion of ENGINEER'S services either by CLIENT or by ENGINEER, upon seven (7) days written notice to the other at the address of record. Termination shall release each party from all obligations of this Agreement, except as specified in paragraph VIII.B below.
 - B. **COMPENSATION PAYABLE ON TERMINATION:** On termination, by either CLIENT or ENGINEER, CLIENT shall pay ENGINEER the full amount specified in paragraph II.A with respect to any phase of Basic Engineering Services which has been completed plus an amount fixed by applying the rate specified for Additional Services in paragraph II.B to all Basic Services performed to the date of termination for any phase then in progress, plus an amount fixed by applying the rate specified in paragraph II.B to all Additional Services performed to date of termination (including all Reimbursable Expenses incurred).
- IX. **SUCCESSORS AND ASSIGNS:** CLIENT and ENGINEER each binds itself, and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. Neither CLIENT nor ENGINEER shall assign, sublet, or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than CLIENT and ENGINEER.

- X. **SPECIAL PROVISIONS:** This instrument contains the entire Agreement between CLIENT and ENGINEER and there are no other agreements, written or oral, by, between or entered into by a third party on behalf of CLIENT and ENGINEER except as additionally stated below:
- A. All letter proposals describing the scope of services and method of compensation that are mutually agreed upon shall become part of this Agreement.
 - B. Records pertaining to ENGINEER'S Fees and Reimbursable Expenses shall be kept by the ENGINEER on the basis of generally accepted accounting principles, consistently applied, and shall be available to the CLIENT or CLIENT'S representatives during normal business hours in the office of the ENGINEER and for three (3) years following completion of each Project until Developer has been reimbursed by CLIENT for such Fees and Reimbursable Expenses, or as required by state law and the CLIENT'S adopted records retention schedules, whichever is later.
 - C. The ENGINEER shall be deemed an independent contractor in the performance of work or services herein agreed to, and any of its employees performing work required hereunder shall be deemed solely employees of the ENGINEER or its subcontractors, where appropriate.
- XI. **INVALIDATION AND MODIFICATIONS:** If this Agreement is not executed by CLIENT within 30 days of date tendered, it shall become invalid unless ENGINEER extends the time in writing. This Agreement can be modified only by mutual written consent of both parties.

XII. This Agreement shall be governed by the laws of the State of Texas. Executed and effective this ___ day of May, 2021.

CITY OF MONTGOMERY, TEXAS
101 Old Plantersville Road
Montgomery, TX 77316

WARD, GETZ & ASSOCIATES, LLP
4526 Research Forest, Suite 175
The Woodlands, TX 77381

BY: _____

BY: _____

DATE: _____

DATE: _____

ATTEST: _____

ATTEST: _____