

PROFESSIONAL SERVICES AGREEMENT

This CONTRACT ("CONTRACT") is made and entered into by and between the City of Richwood, a Texas home rule municipality (hereinafter "CITY"), and Strand Associates, Inc. (hereinafter "ENGINEER").

Recitals

- a. The CITY is in need of certain engineering services; and
- b. The CITY has solicited Requests for Qualifications; and
- c. ENGINEER represents that it has the necessary expertise to provide such services, including transportation planning, storm water consultation, capital projects management, observations, GIS mapping, land surveying, water and wastewater projects and other general on-call engineering consultation services (hereinafter "Services").

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. **Services.** ENGINEER shall perform the Services described in the Scope of Work listed and identified in the CITY's Request for Qualifications dated April 15, 2018 and incorporated herein by reference, and those additional items set forth in the ENGINEER's response and fee proposal dated April 26, 2018 and incorporated herein by reference and as may be agreed to by the ENGINEER and the CITY. If any incorporated term from the Request for Qualifications or the ENGINEER'S response and fee proposal is inconsistent with this CONTRACT, this CONTRACT shall control. The CITY makes no guarantee of a specific volume of Services or a total contracted amount arising from this CONTRACT and assignment of services to be rendered by ENGINEER shall be at CITY's discretion. ENGINEER shall complete services as requested and authorized by the Public Works Director or the City Manager.
2. **Term.** The term of this CONTRACT shall be for two (2) years beginning on June 1, 2018 and ending on May 31, 2020 unless terminated sooner as set forth in this CONTRACT. The terms of this CONTRACT may at CITY's sole discretion be extended for an additional time period beyond the expiration date. Any modification, or extension of this CONTRACT termination date shall be in writing.
3. **Independent Contractor.** Both parties agree that: (a) the Services contracted for in this CONTRACT falls within the distinct nature of ENGINEER's business; (b) the nature of the Services contained within this CONTRACT is specialized, and CITY has elected to contract out the Services rather than attempt to perform the Services with its current workforce; (c) ENGINEER is an incorporated business that possesses the personnel and materials necessary to perform the Services; (d) the relationship of the Services provided by ENGINEER has no relationship to the regular business conducted by CITY; (e) it is understood and agreed that ENGINEER is an independent contractor, and nothing herein contained shall constitute, create, give rise to, or otherwise recognize an employment relationship, joint venture, partnership, or

formal business association or organization of any kind between the parties hereto, other than as contracting parties, nor shall ENGINEER or any subcontractor, or any employee of ENGINEER or any subcontractor be deemed to be employed by CITY or entitled to any remuneration or other benefits from the CITY, other than as set forth in this CONTRACT.

4. **Subcontracts.** ENGINEER shall not enter into any subcontract with respect to any of the Services to be performed hereunder without the CITY's prior written approval. All subcontracts shall comply with applicable federal and state laws and regulations and ENGINEER shall impose on the subcontractor substantially the same obligations as are imposed on the ENGINEER by this CONTRACT. ENGINEER shall be fully responsible for all acts and omissions of its subcontractor(s) and of persons directly or indirectly employed by subcontractor(s).
5. **Time for Completion.** ENGINEER's Services will be provided in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. ENGINEER's services shall be performed in accordance with an agreed upon schedule for the performance of the services hereunder. Time limits established by a schedule approved by the CITY shall not be exceeded by the ENGINEER unless specifically authorized by the CITY in writing.
6. **Payment.** The ENGINEER shall bill the CITY monthly for the fee due based upon an agreed upon hourly rate for Services completed for each itemized task pursuant to this Contract and as set forth in a fee proposal approved by the CITY. CITY shall pay invoices for satisfactorily completed Services and all reasonable and necessary Services within thirty (30) days of the date of receipt. Prior to payment to the ENGINEER, the CITY shall deduct therefrom, upon notification to the ENGINEER, any and all unpaid privilege, license and other taxes, fees and any and all other unpaid monies due the CITY from the ENGINEER and shall apply those monies to the appropriate accounts. ENGINEER shall provide to the CITY any information necessary to determine the total amount(s) due. Total compensation for Services performed shall not exceed the annual approved CITY budget. No additional payments will be made for per diem or additional costs unless pre-approved by CITY. Nonpayment within forty-five (45) days of receipt of invoice may, at ENGINEER'S option, result in the suspension of Services upon five (5) days notice to the CITY. ENGINEER will resume Services upon payment in full of all undisputed invoice amounts and shall not be liable to the CITY for such a suspension.
7. **Defects in Services.** ENGINEER shall perform the Services in accordance with the terms of this CONTRACT.. ENGINEER agrees to exercise the skill and care, which would be exercised by comparable professional ENGINEERs performing similar services at the time and in the locality such services are performed. Furthermore, ENGINEER shall perform the Services in accordance with generally accepted methods and standards. The CITY may reject any work product that fails to meet customary professional standards or project specifications. ENGINEER agrees to promptly remedy all such deficiencies at ENGINEER's own expense. The parties shall make a good faith effort to resolve any controversy or claim through informal negotiation. No compensation shall be paid for any rejected Services until such issues have been resolved.

8. **Insurance.** ENGINEER, at his own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed and subject to legal process within the State of Texas. All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this CONTRACT are satisfactorily completed. ENGINEER acknowledges that the amounts of insurance coverage stated herein shall not limit its liability under this CONTRACT.

ENGINEER's insurance shall be primary insurance in regard to the CITY, and any insurance maintained by CITY shall not contribute to it. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, officers, officials and employees for any claims arising out of ENGINEER's negligent acts, errors, mistakes, omissions, or Services.

Prior to commencing Services under this CONTRACT, ENGINEER shall furnish the CITY with certificates of insurance, or formal endorsements as required by this CONTRACT, issued by ENGINEER's insurer(s), as evidence that policies providing the required coverages, conditions and limits required herein are in full force and effect. Standard minimum deductibles are allowed. Any deductibles are the responsibility of ENGINEER.

If a policy does expire during the term of this CONTRACT, a renewal certificate must be sent to CITY fifteen days prior to the expiration date. Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days written notice to CITY.

- a. **Commercial General Liability.** ENGINEER shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this CONTRACT. Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision, which would serve to limit third party action over claims.
- b. **Automobile Liability.** ENGINEER shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the ENGINEER's owned, hired, and non-owned vehicles assigned to or used in performance of the ENGINEER's Services. Such insurance shall include coverage for loading and offloading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.
- c. **Workers' Compensation.** ENGINEER shall carry Workers' Compensation insurance to cover obligations imposed by state statutes having jurisdiction over the ENGINEER's employees engaged in the performance of the Services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit. In case any Services are subcontracted, this

CONTRACT will require the subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of this CONTRACT.

- d. **Professional Liability.** ENGINEER shall maintain Professional Liability insurance covering negligent acts, errors, mistakes and omissions arising out of the Services performed by this ENGINEER, or any person employed by ENGINEER, with a limit of not less than \$1,000,000 each claim. ENGINEER shall notify the CITY upon any termination of its regular professional liability coverage and shall obtain all coverage for a minimum of five (5) years from the CONTRACT termination date.

9. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS CITY, ITS AGENTS, OFFICERS, OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, ACTIONS, PROCEEDINGS, LOSS, COST AND DAMAGES OF EVERY KIND AND DESCRIPTION, INCLUDING ANY REASONABLE ATTORNEY FEES, EXPERT WITNESS FEES, AND/OR LITIGATION EXPENSES, RELATING TO, ARISING OUT OF OR RESULTING FROM ENGINEER'S NEGLIGENT ACTS, ERRORS, MISTAKES OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT, WHICH MAY BE BROUGHT OR MADE AGAINST OR INCURRED BY CITY ON ACCOUNT OF (1) LOSS OR DAMAGE TO ANY PROPERTY OR INTEREST OF CITY, ITS OFFICERS, EMPLOYEES AND AGENTS, OR ANY DAMAGES, INJURY TO PERSON OR PROPERTY, OR DEATH OF ANY PERSON ARISING OUT OF, RELATING TO, OR ALLEGED TO HAVE RESULTED FROM ANY NEGLIGENT ACTS, ERRORS, OMISSIONS, OR SERVICES OF ENGINEER, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THEIR EMPLOYEES, AGENTS, OR REPRESENTATIVES, (2) ANY WORKERS' COMPENSATION CLAIMS, UNEMPLOYMENT COMPENSATION CLAIMS OR UNEMPLOYMENT DISABILITY CLAIMS OF EMPLOYEES OF ENGINEER OR CLAIMS UNDER SIMILAR SUCH LAWS OR OBLIGATIONS. THIS INDEMNIFICATION SHALL NOT EXTEND TO ANY LOSS, DAMAGE, INJURY, OR DEATH OUTLINED HEREIN CAUSED IN WHOLE OR IN PART BY **THE GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF CITY, ITS AGENTS, OFFICERS, OFFICIALS AND EMPLOYEES AND RESULTING IN DAMAGE TO PERSONAL PROPERTY, BODILY INJURY, OR DEATH. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS CONTRACT.**

THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH WITHIN THIS CONTRACT SHALL IN NO WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY AS SET FORTH HEREIN.

10. ENGINEER makes the following representations and warranties:

- a. ENGINEER has the ability, authority, capacity and professional expertise to perform this CONTRACT;
- b. ENGINEER will provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of the Services to be performed hereunder;
- c. ENGINEER will assign specific individuals to key positions and once assigned to Services under this CONTRACT, key personnel shall not be removed or replaced without the CITY's prior written approval; and
- d. ENGINEER is a licensed professional engineer and authorized to conduct engineering services in the State of Texas.

11. **Assignment.** ENGINEER shall not assign its rights to this CONTRACT, in whole or in part, without prior written approval of CITY.
12. **Authority to Contract.** ENGINEER warrants its right and power to enter into this CONTRACT. If any court or administrative agency determines that CITY does not have authority to enter into this CONTRACT, CITY shall not be liable to ENGINEER or any third party by reason of such determination or by reason of this CONTRACT.
13. **Cancellation for Conflict of Interest.** This CONTRACT is subject to cancellation for conflict of interest pursuant to Chapter 176, Local Government Code, the pertinent provisions of which are incorporated into this CONTRACT by reference.
14. **Termination for Cause.** If, through any cause, ENGINEER shall fail to fulfill in a timely and proper manner its obligations under this CONTRACT, or if ENGINEER shall violate any of the covenants, provisions, or stipulations of this CONTRACT, CITY shall thereupon have the right to terminate this CONTRACT by giving ten (10) days written notice to ENGINEER of such termination and specifying the effective date thereof. ENGINEER will be allowed the opportunity to meet with CITY to cure any such indicated breach within ten (10) days. In the event the breach is not cured by ENGINEER, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by ENGINEER shall, at the option of CITY, become its property and ENGINEER shall be paid an amount based on satisfactorily completed Services prior to the termination date; however, no payment shall be allowed for anticipated profits on unperformed Services. Notwithstanding the above, ENGINEER shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this CONTRACT by ENGINEER and CITY may withhold payments to ENGINEER upon notification to ENGINEER for purpose of set-off until such time as the exact amount of damages due to the CITY from ENGINEER are determined.
15. **Termination for Convenience.** CITY may terminate this CONTRACT at any time by giving written notice to ENGINEER of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials shall, at the option of CITY, become its property. If this CONTRACT is terminated by CITY as provided herein, ENGINEER shall be paid an amount based on the time and expense incurred by ENGINEER prior to the termination date, however, no payment shall be allowed for anticipated profit on unperformed Services.
16. **Engineer's Responsibilities upon Termination.** Upon receipt of a termination notice, ENGINEER shall (a) promptly discontinue all services (unless the notice directs otherwise), and (b) deliver or otherwise make available to the CITY copies of all data, design, calculations, drawings, specifications, reports, estimates, summaries, legal descriptions and other information and materials developed or accumulated by ENGINEER in performing the CONTRACT.
17. **Non-Appropriation.** Notwithstanding any other provision of this CONTRACT, this CONTRACT may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining CITY or other public entity obligations under this

CONTRACT. CITY shall have no further obligation to ENGINEER, other than to pay for services rendered prior to termination.

18. **Remedies.** Either party may pursue any remedies provided by law for breach of this CONTRACT. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this CONTRACT.
19. **Waiver.** Failure of either party to insist on one or more instances upon the full and complete compliance with any of the terms or provisions of this CONTRACT to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.
20. **Choice of Law/Venue.** Any dispute, controversy, claim or cause of action arising out of or related to this CONTRACT shall be governed by Texas law. The venue for any such dispute shall be in Brazoria County, Texas. Each party waives the right to object to venue in Brazoria County for any reason.
21. **Entire Agreement.** This CONTRACT constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein and the parties disclaim reliance on any prior communications regarding this CONTRACT. This CONTRACT may be modified, amended, altered or extended only by a written amendment signed by the parties.
22. **Construction.** This CONTRACT shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this CONTRACT. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the review of and entry into this CONTRACT.
23. **Incorporation of Applicable Laws.** Every provision of applicable law required by statute or regulation to be in this CONTRACT will be read and enforced as though included herein. Each party shall promptly notify the other upon discovery that any such provision has been omitted. The parties shall adhere to all applicable State and Federal Laws.
24. **Severability.** If any provision of this CONTRACT is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this CONTRACT is invalid or unenforceable, but that by limiting such provision it would be valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
25. **Discrimination.** The ENGINEER, with regard to the Services performed by it after award and during its performance of this CONTRACT, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of

subcontractors, including procurement of materials and leases of equipment. The ENGINEER will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Texas Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

- 26. **Ownership of Documents.** All original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by ENGINEER under this CONTRACT are instruments of service for this CONTRACT only and shall remain the property of the CITY whether the Project is completed or not and shall be delivered to the CITY upon completion or termination of the services. The CITY's reuse of the instruments of service for purposes other than intended by this CONTRACT shall be at the CITY'S sole risk and without liability to the ENGINEER.

- 27. **No Third Party Beneficiaries.** This CONTRACT is entered into for the sole benefit of the CITY and ENGINEER and no other parties are intended to be direct or incidental beneficiaries of this CONTRACT. Nothing in this CONTRACT shall be construed to create, impose, or give rise to any duty owed by ENGINEER or CITY to any party other than the CITY and ENGINEER.

- 28. **Non-Exclusive Contract.** This CONTRACT is for the sole convenience of the CITY. The CITY reserves the right to obtain like goods or services from another source when deemed necessary by CITY.

- 29. **Notices.** All notices, requests, demands, payments and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following address on the date received:

CITY:

City of Richwood
Attn: City Manager
1800 Brazosport Blvd
Richwood, Texas 77531

ENGINEER:

Stand Associates, Inc.
203 South Jackson Street
Brenham, Texas 77833

With Copy to:
Jason M. Cordoba, Attorney at Law
85 Oak Drive, Suite 102
Lake Jackson, Texas 77566

[signature page on following page]

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 12 day
of June, 2018.

ENGINEER

CITY

Matt Schick
Corporate Secretary

Michael G. ...
~~Mayor~~ City Manager

Attested By:

Glenn Cook
City Secretary