

AGREEMENT TO PROVIDE PROFESSIONAL SERVICES

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 20____, by and between XXXXXX ("PROFESSIONAL") and between the Sanger Industrial Development Corporation (SIDC), a Texas non-profit corporation, and the Sanger Texas Development Corporation (STDC), a Texas non-profit corporation, each acting by and through their respective authorized officers and representatives.

WITNESSETH

WHEREAS, SIDC, and STDC desire to engage PROFESSIONAL to provide professional services as more fully described on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, SIDC and STDC recognize the importance of a strategic plan to guide long-term economic development efforts, support sustainable growth, and enhance the economic competitiveness of the region; and

WHEREAS, PROFESSIONAL agrees to provide such work and services for SIDC, and STDC in accordance with the terms of this Agreement;

NOW, THEREFORE, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Employment of PROFESSIONAL.

(a) SIDC and STDC agree to engage PROFESSIONAL and PROFESSIONAL hereby agrees to perform the services described in Exhibit "A" attached hereto and incorporated herein by reference.

(b) Notwithstanding anything to the contrary contained in this Agreement, SIDC, and STDC and PROFESSIONAL agree and acknowledge that SIDC, STDC is entering into this Agreement in reliance on PROFESSIONAL's special and unique abilities. PROFESSIONAL accepts the relationship of trust and confidence established between it and SIDC, and STDC by this Agreement. PROFESSIONAL acknowledges that PROFESSIONAL shall be solely responsible for determining the methods for performing the services described in Exhibit "A" attached hereto. PROFESSIONAL covenants with SIDC, and STDC to use its best efforts, skill, judgment, and abilities to perform the work required by this Agreement and to further the interests of SIDC and STDC in accordance with SIDC's and STDC's requirements, in compliance with applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. PROFESSIONAL warrants, represents, covenants, and agrees that all of the work to be performed by PROFESSIONAL under or pursuant to this Agreement shall be done (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing under the same or similar circumstances and applicable

professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be.

(c) PROFESSIONAL will be responsible for supplying all tools and equipment necessary for PROFESSIONAL to provide the services set forth in Exhibit "A" attached hereto.

2. **Compensation.** SIDC and STDC agree to pay PROFESSIONAL the fees set forth in Exhibit "A" attached hereto. Within fifteen (15) days of the end of the month within which services were rendered, PROFESSIONAL shall provide SIDC and STDC an invoice specifying the services provided during the previous month and the total amount owed by SIDC and STDC. Payment will be made by SIDC and STDC within thirty (30) days of receipt of an invoice from PROFESSIONAL.
3. **Changes.** SIDC and STDC may, from time to time require changes in the scope of services of PROFESSIONAL to be performed hereunder. Such changes, which are mutually agreed upon by and between SIDC and STDC and PROFESSIONAL, shall be incorporated in written amendment to this Agreement.
4. **Services and Materials to be Furnished by SIDC and STDC.** SIDC and STDC shall furnish PROFESSIONAL with all available information and data PROFESSIONAL requests pertinent to the execution of this Agreement. SIDC and STDC shall cooperate with PROFESSIONAL in carrying out the work herein and shall provide adequate staff for liaison with PROFESSIONAL.
5. **Ownership of Documents.** All reports, plans, specifications, computer files and other documents prepared by PROFESSIONAL for which SIDC and STDC have been compensated pursuant to this Agreement shall be the property of SIDC and STDC. PROFESSIONAL will deliver to SIDC and STDC copies of the prepared documents and materials. PROFESSIONAL shall make all documents and related data and material utilized in developing the documents available to for inspection whenever requested. PROFESSIONAL may make copies of any and all such documents and items and retain same for its files. PROFESSIONAL shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone other than PROFESSIONAL subsequent to delivery of the prepared documents and materials. However, any such change or other use shall be sealed by the individual making the change or use and shall be appropriately marked to reflect what was changed or modified.
6. **Term and Termination of Agreement.** This Agreement will be for a period of beginning on _____ and expiring on _____. Either party may terminate this agreement at any time by providing thirty (30) days written notice to the other party.
7. **Notices.** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as

the other party hereto may designate in written notice transmitted in accordance with this provision.

If intended to the SIDC

Sanger Industrial Development Corporation
Nancy McAlister, Board President
302 Bolivar Street
Sanger, TX 76266

If intended to the STDC

Sanger Texas Development Corporation
John Payne, Board President
302 Bolivar Street
Sanger, TX 76266

With a copy to

Shani Bradshaw, Director of Economic Development
302 Bolivar Street
Sanger, TX 76266

With a courtesy copy to

John Noblitt, City Manager
502 Elm Street
Sanger, TX 76266

8. **Completeness of Contract.** This Agreement and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Agreement and the documents attached hereto, the terms of this Agreement shall control, then Exhibit A SIDC's and STDC's Request for Qualifications, then Exhibit B PROFESSIONAL'S Response to the Request for Qualifications. This Agreement may not be subsequently modified except by a writing signed by both parties.
9. **SIDC and STDC Not Obligated to Third Parties.** SIDC and STDC shall not be obligated or liable hereunder to any party other than PROFESSIONAL.
10. **Final Decisions.** Serving as a PROFESSIONAL to SIDC and STDC, PROFESSIONAL shall advise all parties that final decisions shall be made by the City Council of the City of Sanger.
11. **Indemnification.** **PROFESSIONAL DOES HEREBY COVENANT AND**

CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBPROFESSIONAL OR SUPPLIER COMMITTED BY PROFESSIONAL, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH PROFESSIONAL EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (b) AND PROFESSIONAL WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO PROFESSIONAL'S LIABILITY.

PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS SECTION (INDEMNIFICATION) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. **Insurance.** PROFESSIONAL shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter the following minimum insurance:

- A. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability in an amount of not less than \$1,000,000.
- B. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- C. Statutory workers' compensation and employers' liability insurance as required by state law.
- D. Professional liability insurance (Errors and Omissions) with a limit of \$1,000,000 per claim/annual aggregate.

PROFESSIONAL shall provide SIDC and STDC with proof of insurance required hereunder prior to commencing work for SIDC and STDC, and SIDC and STDC shall be named as an additional insured on the policy. PROFESSIONAL shall provide SIDC and STDC with written notice of any coverage limit change on the insurance. Such policies shall name SIDC and STDC, its officers, and employees as an additional insured and shall provide for a waiver of subrogation against SIDC and STDC. PROFESSIONAL shall insure that all

subcontractors comply with the same insurance requirements.

13. **Client Objection to Personnel.** If at any time after entering into this Agreement, SIDC and STDC have any reasonable objection to any of PROFESSIONAL's personnel, or any personnel, professionals and/or consultants retained by PROFESSIONAL, PROFESSIONAL shall promptly propose substitutes to whom SIDC and STDC have no reasonable objection, and PROFESSIONAL's compensation shall be equitably adjusted to reflect any difference in PROFESSIONAL's costs occasioned by such substitution.
14. **Timeliness of Performance.** PROFESSIONAL shall perform its professional services with due and reasonable diligence consistent with sound professional practices.
15. **Personnel.** All of the services required hereunder will be performed by PROFESSIONAL or under PROFESSIONAL's supervision, and all personnel engaged in the work shall be qualified to perform such services.
16. **Independent Contractor.** In performing the services under this Agreement, PROFESSIONAL is acting as an independent contractor. No term or provision hereof be construed as making PROFESSIONAL the agent, servant, or employee of SIDC and STDC or as creating a partnership or joint venture relationship between PROFESSIONAL and SIDC and STDC.
17. **Assignability.** The parties hereby agree that PROFESSIONAL may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of SIDC and STDC.
18. **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.
19. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Agreement shall lie in Denton County, Texas.
20. **No Third-Party Beneficiary.** For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with SIDC and STDC, and PROFESSIONAL, or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations they owe to either SIDC and STDC or PROFESSIONAL.
21. **Exhibits.** The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.
22. **Conflicts of Interest.** By signature of this Agreement, PROFESSIONAL warrants to SIDC

and STDC that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including business or personal financial interests, direct or indirect, in property abutting the proposed project and business relations with abutting property owners, or with elected officials or employees of SIDC and STDC. PROFESSIONAL further warrants that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this Agreement and prior to final payment under the Agreement. PROFESSIONAL warrants that it has submitted to SIDC and STDC a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

23. **Authority to Sign.** The parties hereby warrant and represent that the undersigned have full authority to execute this Agreement on behalf of their respective parties.
24. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

IN WITNESS WHEREOF, SIDC, STDC and the PROFESSIONAL have executed this Agreement as of the date first written above.

SIDC: Sanger Industrial Development Corporation

Executed this _____ day of _____, _____.

By: _____

Nancy McAlister, SIDC

President

STDC: Sanger Texas Development Corporation

Executed this _____ day of _____, _____.

By: _____

John Payne, STDC

President

[PROFESSIONAL'S NAME]

By: _____

Print Name: _____

Title: _____

Approved as to Form

Jeff Moore

SIDC and STDC Attorney

EXHIBIT “A”
BID RESPONSE/SCOPE OF SERVICES