

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
ENGINEERING & PLANNING PROJECT NO. 2024-10001  
CITY OF TOMBALL  
NORTH SYCAMORE PARKING**

**THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS         §**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and WGA Consulting Engineers ("Engineer").

**WITNESSETH:**

WHEREAS, the City desires to contract for the design of the North Sycamore Parking (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I.  
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

**SECTION II.  
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services

agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

### **SECTION III. OWNERSHIP OF WORK PRODUCT**

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

### **SECTION IV. TIME FOR PERFORMANCE**

The time for performance is an estimated 210 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

### **SECTION V. COMPLIANCE AND STANDARDS**

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

### **SECTION VI. INDEMNIFICATION**

**To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City,<sup>2</sup>its officers, agents, and employees against liability for damage caused by or resulting from an act**

**of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.**

**SECTION VII.  
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$106,000, including reimbursable expenses as identified in Exhibit "A".

**SECTION VIII.  
INSURANCE**

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

**SECTION IX.  
TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

**SECTION X.  
ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

WGA Consulting Engineers  
Attn: Chris Roznovsky, P.E.  
2500 Tanglewilde, Suite 120  
Houston, TX 77063

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball  
Attn: Project Manager  
501 James Street  
Tomball, Texas 77375

**SECTION XI.  
LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.  
SUCCESSORS AND ASSIGNS**

The City and Engineer bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.  
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.  
MODIFICATIONS**

This instrument, including Exhibits A and B, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

**SECTION XV.  
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.  
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.  
PAYMENT TO ENGINEER FOR SERVICES AND  
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**XVIII.  
MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**WGA Consulting Engineers:**

  
\_\_\_\_\_

Name: Chris Roznovsky, PE

Title: Practice Leader

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
David Esquivel, City Manager

ATTEST:

\_\_\_\_\_  
Tracylynn Garcia, City Secretary



March 13, 2024

Mr. Troy Toland, P.E.  
City of Tomball Public Works  
501 James Street  
Tomball, TX 77375  
By email: [ttoland@tomballtx.gov](mailto:ttoland@tomballtx.gov)

RE: Proposal for Civil Engineering Services  
Sycamore Street Improvements  
100-300 Block of Sycamore Street  
City of Tomball, Harris County, Texas  
Project type: Public Roadway  
WGA Project No.00710-001

Dear Mr. Toland:

WGA Consulting Engineers (WGA) is pleased to submit this proposal to City of Tomball (City) to provide Civil Engineering Design Services for the above referenced project. We understand the City wishes to develop off street parking and roadway expansion at the 100-300 Block of Sycamore Street in the City of Tomball, Texas, based on an email request for proposal. We also understand the City wants explore various options of obtaining approval from the adjacent rail road to obtain access to locate parking within the railroad right of way, if possible. Our scope of services and fee are below.

### **Scope of Services**

#### **I. Preliminary Design:**

WGA will coordinate with BNSF to discuss the ability of obtaining the right to locate parking within their right of way. WGA will coordinate with the City during the process until a go/no-go decision is made on utilizing the rail road property for parking. Upon reaching a decision, WGA will provide a preliminary design inclusive of roadway improvements, parking, and sidewalk for review and approval to the City.

#### **II. Design Phase Services:**

WGA will prepare plans for the above-mentioned roadway improvements project based on the City approved preliminary layout. After commencement of this task, significant changes to the preliminary layout may be considered as an additional service. This task does not include design of offsite infrastructure, such as offsite storm sewer extensions, offsite sanitary sewer extension, water main extension, median openings, or left turn lanes. Any dry utilities identified to be in conflict with the proposed improvements will be coordinated by WGA to be relocated by others, if possible. We anticipate the following submittals will be required:

- City of Tomball
- Texas Department of Transportation

WGA will submit 60%, 90%, and 100% construction documents to the City for review/approval, and meeting with City Staff to discuss/review at each milestone. Technical specifications and bid documents will be submitted to the City for review at the 90% and 100% design milestones.

*The plan set will consist of the following sheets:*

- Cover Sheet  
Plan Contents, Vicinity Map, Site Information, and required City notations.
- General Notes  
Inclusive of generic City and project specific notes.
- Demolition Plan  
Demolition plan showing the existing features to be demolished and/or protected during construction including protection of trees.
- Overall Grading and Paving Plan  
Grading and paving plan inclusive of elevations, details, sections, and profiles relative to paving, sidewalks, handicap ramps, curbs and curb cuts. This plan will show spot elevations for the limited landscape areas typically associated with a roadway improvement of this type.
- Permanent Striping and Signage Plan  
Permanent striping and signage plan showing all proposed striping and signage within the project area.
- Storm Drainage Plan / Drainage Area Map  
A drainage area map for the site indicating existing drainage areas, proposed drainage areas, and related calculations based on the proposed grading plan for the Right of way.
- Roadway - Plan and Profile  
Plan for the proposed roadway infrastructure for the improvements. (It is assumed that underground storm sewer is not required, if during the preliminary or design phase of the project it is identified as required, an additional services proposal will be provided.)
- Erosion Control Plan and Details  
Erosion control plans indicate measures to be implemented by the contractor prior to disturbing the site. Note that WGA is not responsible for any inspections of the SWPPP implementation or for filing of the NOI, NOT, or any other aspect of the SWPPP.
- Traffic Control Plan and Phasing Plan  
Traffic control plans and phasing plan required for the roadway widening and parking lot improvements. Where available, City/TxDOT details will be utilized or referenced.
- Details  
Detail sheets showing the paving, signage, etc. as required for the project. Where available, City details will be utilized or referenced.

### III. **TxDOT Permitting:**

WGA will prepare and submit a TxDOT driveway and drainage permit application, as applicable, for the proposed revised street tie-in. It will include the necessary civil construction documents for tie-in to the TxDOT ROW, on-site drainage systems and drainage connections to TxDOT ROW.



**IV. Texas Department of Licensing & Regulation (TDLR) for compliance with the Americans with Disabilities Act (ADA):**

WGA will use a consultant to prepare, coordinate, and submit the necessary documents to obtain an approval of compliance to the TDLR Plan Review. Cost for consultant will be billed as a reimbursable expense and WGA coordination with consultant will be hourly.

**V. BNSF Permitting (If Required):**

WGA will prepare and submit the necessary documents to obtain approval from BNSF to construct improvements within their right-of-way. (Insurance and permitting fees to be paid directly by City.)

**VI. Bid Phase Services**

WGA shall prepare bid documents and provide the City Engineer with the final documents for solicitation on CivCast for interested parties to review. WGA will organize and run the pre-bid meeting virtually via Microsoft Teams, address contractor questions during the bidding process & submit bid addendums as applicable. WGA will open bids electronically via CivCast, review the bid results, prepare a bid tabulation, and recommendation of award.

**VII. Construction Administration:**

Construction Administration includes the following items at an assumed contract period of performance of 90 calendar days. Delays during construction which extend the contract period of performance past 120% of the original, will be billed as an additional service per the schedule of hourly rates attached.

*RFIs*

The Consultant shall review and respond to requests for information about the Contract Documents. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific drawings or specifications in need of clarification and the nature of the clarification requested. The Consultant's response to such requests shall be made in writing in a reasonably timely manner as to not adversely affect the Owner's schedule. If appropriate, the Consultant shall prepare and issue supplemental drawings and specifications in response to requests for information.

*Submittals*

The Consultant shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval concerning any civil design related submittals. The Consultant's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Consultant's professional judgement to permit adequate review.

*General Construction Oversight*

Periodic site inspection by WGA construction staff or design team to ensure project is being constructed per plans and specifications. Assume weekly site visits at 2 hours per visit which includes any travel time.

*Pay Estimates & Project Close Out Documentation*

Review and field verification of pay estimates. Prepare and issue certificates of substantial completion and recommendation to City of Certificate of Acceptance. Preparation of as built construction drawings for City records.

**VIII. Reimbursable Expenses:**

Service includes additional fees for geo-technical investigation, printing expenses, Civ-Cast advertising (new paper advertising to be paid directly by City), TDLR consultant and review fees, and other reimbursable expenses.

**This Proposal Assumes The Following Are Not Required Or Will Be Provided By Others And Have Been Excluded:**

- Survey. Current boundary, topographic, and utility survey will be provided by City. Any additional survey information required for government approvals will be billed to the Client as an additional service in excess of the budget amount estimated.
- Drainage Impact Analysis
- Floodplain Mitigation. According to the Federal Emergency Management Agency (FEMA) the subject site is graphically located outside the 500-year floodplain (Zone "X" Unshaded) as delineated on the FEMA FIRM Map 48201C0230L, dated June 18, 2007.
- Dry utilities design, including but not limited to, gas, electric, and communications
- We will provide erosion control plans for permitting approval; General Contractor/Owner shall provide the required Storm Water Pollution Prevention Plan (SWPPP) for construction
- Landscape and Irrigation Plans
- Tree Preservation plans and Tree Mitigation plans
- Additional effort required by the Client or Design Team which may arise, and are not outlined above, will billed as an additional service.
- Municipal agency review fees, impact fees, or plat fees
- Wetland permitting and coordination
- Environmental studies
- Site walls, structural site design or pump stations
- Agency review fees and Reimbursable expenses will be invoiced at cost plus 10%.
- If additional services are required and authorized by Client, they will be invoiced hourly per the attached rate schedule.

**Fee Summary**

The services will be provided as Lump Sum (LS) as follows unless otherwise noted:

Civil Engineering Design Services

I.	Preliminary Design (Hourly Not to Exceed)	\$ 12,000
II.	Design Phase Services (LS)	\$ 39,000
III.	TxDOT Permitting (LS)	\$ 9,500
IV.	TDLR Approval (Hourly Not to Exceed)	\$ 2,000
V.	Bid Phase Services (LS)	\$ 3,500
VI.	Construction Administration (LS)	\$ 25,000
VII.	Reimbursable Expenses (Cost Plus 10%)	<u>\$ 15,000</u>
	<b>Total Civil Engineering Design</b>	<b>\$ 106,000</b>

Additional Services

I.	BNSF Permitting (If Required, Hourly Not to Exceed)	\$ TBD
II.	Extended Construction Administration Services	\$ TBD

**Closure**

Notes:

- *This proposal is good for a period of up to 90 days from the date of the proposal.*

Please review the attached Terms and Conditions (Exhibit A), fill out your project and billing details below, sign this proposal, and return an executed copy to our office. Our receipt of the executed document will serve as authorization to proceed. If there are any questions, please feel free to contact me at 713-789-1900. Thank you for the opportunity and we look forward to working with you on this project.

Regards,

Chris Roznovsky, P.E.  
Practice Leader

Accepted by Client

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

Client Project Number: \_\_\_\_\_

**Billing Contact Information**

Billing Contact Name: \_\_\_\_\_

Company (If different): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Additional Info: \_\_\_\_\_

### SCHEDULE OF HOURLY RATES

Effective January 2024  
*Subject to Revision*

<b><u>Position</u></b>	<b><u>Hourly Rate</u></b>
Engineer VIII	\$275
Engineer VII	\$235
Engineer VI	\$210
Engineer V	\$175
Engineer IV	\$160
Engineer III	\$150
Engineer II	\$130
Engineer I	\$120
Design Project Manager	\$160
Senior Designer	\$140
Designer	\$120
CAD Technician II	\$100
CAD Technician	\$ 80
Construction Manager IV	\$205
Construction Manager III	\$170
Construction Manager II	\$140
Construction Manager I	\$120
Construction Administrator	\$120
Field Project Representative III	\$120
Field Project Representative II	\$100
Field Project Representative I	\$ 90
Project Accountant	\$110
Project Administrator	\$ 90

Reimbursables to include but not limited to mileage, travel, reproduction, and others at + 10%

**EXHIBIT A**  
**AGREEMENT FOR**  
**ENGINEERING SERVICES**

**GENERAL TERMS AND CONDITIONS**

BILLING

Statements are issued when appropriate and shall be payable to WGA upon receipt, whenever issued, unless otherwise agreed. Interest at one percent (1%) per month accruing from the date of statement shall be payable on any amounts not paid within 30 days. All payments thereafter shall be applied first to accrued interest on the fees and reimbursables and then to the principal unpaid amount. Any costs incurred in collecting any of the above amounts, which become delinquent, shall be paid by the CLIENT upon demand, including but not limited to, attorney's fees and the cost of employees' time expended on the collection.

DIRECT PERSONNEL EXPENSE

If the project is performed on the basis of Direct Personnel Expense times a multiplier, Direct Personnel Expense is defined as the direct salaries of the ENGINEER's personnel engaged on the project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment Texas and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the compensation for personnel time and include actual expenditures made in the interest of the job, such as those for transportation, living expenses in connection with out-of-town travel, long distance communications, expenses for reproductions (excluding reproductions for use in our office or consultant's offices), expense of postage and handling of drawings, specifications and other documents, expense of any renderings or models, and any similar expenses made in the interest of the job. The above expenses shall be reimbursable at 1.15 times the actual cost.

SUSPENSION OR TERMINATION OF SERVICES

If the CLIENT fails to make any payment due ENGINEER on account of its services and expenses within thirty (30) days after the date of the statement, then ENGINEER may, after giving (7) days written notice to the CLIENT, suspend services until all amounts due on services and expenses have been paid in full. Further, ENGINEER shall have the right to withhold all drawings, specifications, and other instruments of service as of the date services are suspended. In the event that the CLIENT requests termination of the services prior to completion of a report, ENGINEER reserves the right to complete such investigations and analyses as are necessary to protect its professional reputation, or to complete appropriate records of the services performed to date. A termination charge to cover the cost thereof in an amount not to exceed 10% of all charges incurred up to the date of the stoppage of the services may be made at the discretion of ENGINEER.

LAWS/REGULATIONS

This agreement is to be governed by the law of the principal place of business of the ENGINEER. The CLIENT and the ENGINEER are each bound to a policy of non-discrimination and equal employment opportunity. The CLIENT and ENGINEER are committed to complying with Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Section 503 of the Rehabilitation Act of 1973; Section 402 of the Vietnam Era Veterans Readjustment Assistant Act of 1974; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963 and any other applicable local, state or federal statutes or regulations.

**Prior to initiating litigation against ENGINEER for any alleged claim, based on negligence or other legal theory, the CLIENT agrees to first negotiate in good faith for a period of thirty days, then to mediate the claim under rules of mediation as agreed to at that time.**

**LIMITS OF LIABILITY**

ENGINEER's services, as limited by the CLIENT, are performed with the usual thoroughness and competence of the ENGINEER and engineering professions in Texas. No warranty or other representation, either expressed or implied, is included or intended in ENGINEER's proposals, contracts, reports, designs, and other services including, without limitation, warranties of fitness or merchantability which are hereby disclaimed. In retaining ENGINEER's services, the CLIENT expressly agrees that in all cases, ENGINEER's liability shall be limited solely to its negligent acts, errors or omissions. ENGINEER's liability to the CLIENT for injury or damage to persons or property arising out of services performed for CLIENT and for which legal liability may be found to rest upon ENGINEER, other than for professional errors and omissions, will be limited to recovery from ENGINEER's general liability insurance coverage and shall be limited to the sum of the fee payable to ENGINEER under this Agreement. For any damages resulting from ENGINEER's negligent acts, errors, or omissions in rendering professional services, its liability will be limited to the sum of \$50,000.00 or its fee, whichever is less. The CLIENT agrees that in no event will it make a claim against ENGINEER after the expiration of four years from the substantial completion of ENGINEER's services hereunder, or the expiration of two (2) years from the date the CLIENT knew or should have known of said claim, whichever shall first occur. Following such date, all such CLIENT claims, if any, known or unknown, shall be deemed to be and are hereby waived. To the extent that any applicable statute of limitations provides for a shorter period of time, such shorter time period shall control.

In the event the CLIENT makes a claim against ENGINEER at law or otherwise, for any alleged negligent act, error or omission arising out of the performance of its professional services, and the CLIENT fails to prove such claim, then the CLIENT shall pay all costs incurred by ENGINEER in defending itself against said claim, including but not limited to, attorney's fees, experts' fees, consultants' fees, and the cost of employee's time expended on the claim.

**In the event of a claim against ENGINEER and its consultants arising out of or in any way related to the negligence or other liability of the CLIENT, the Contractor or any others associated with or related to the CLIENT's project, the CLIENT shall indemnify and hold ENGINEER and its consultants harmless from and against such claim and any associated liability or expense including but not limited to, attorney's fees, experts' fees, consultants' fees, and the costs of employees time expended on the claim.**

**EXCLUDED SERVICES**

ENGINEER has not been retained or compensated for and shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of any Contractor or Subcontractor or any other person performing work, or for any acts or omissions of any of them, or for the failure of any of them to carry out work in accordance with their contract documents.

**ADDITIONAL CONSULTANTS**

Fees for services of additional consultants to be retained under subcontract to WGA Houston, when required, and when authorized by the CLIENT, will be billed to the CLIENT at 1.10 times such consultants' net billings to WGA Houston, unless otherwise agreed.

**CONFIDENTIALITY**

ENGINEERS, its agents, employees, and Consultants shall hold client information, data, and documents (collectively, "the information") that they receive, or to which they have access, in strictest confidence. ENGINEER, its agents, employees and Consultants shall not disclose, disseminate, or use the Information unless the Client authorizes such in writing.

**CLIENTSHIP OF DOCUMENTS**

All documents field notes and data prepared or obtained by or through ENGINEER and related to the CLIENT's project will be joint property of the ENGINEER and CLIENT and may be transferred to other parties or used for other purposes (e.g., marketing) with written consent from the other party. **Any expense of the documents without written authorization from ENGINEER shall be at the CLIENT's own risk and without liability to ENGINEER.**

**TIME LIMIT**

An agreement or proposal is subject to renegotiation if not accepted within 90 days.