

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSULTANT SERVICES
RELATED TO
PROJECT NO. 2025-10002
CITY OF TOMBALL
TOMBALL GATEWAY MONUMENTATION**

**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 Westwood Professional Services, Inc. ("Engineer").

WITNESSETH:

WHEREAS, Consultant represents that it is capable of providing and qualified to provide professional services to the City and desires to perform the same;

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

**SECTION I.
SCOPE OF AGREEMENT**

Consultant 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 Consultant compensation as stated in the sections to follow.

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

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

Consultant agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Consultant 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 Consultant's completion of the services which will result in the production of such instruments and Consultant'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 Consultant from continuing to use those processes, analyses and data.

**SECTION IV.
TIME FOR PERFORMANCE**

The time for performance is as estimated in Exhibit A attached hereto. Upon written request of Consultant, 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 Consultant has no control.

**SECTION V.
COMPLIANCE AND STANDARDS**

Consultant 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 Consultant'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, 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 Consultant 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 \$51,700, including reimbursable expenses.

**SECTION VIII.
INSURANCE**

Consultant 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 Consultant. Upon receipt of such notice, Consultant 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, Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Consultant 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:

Westwood Professional Services, Inc.
Attention: Patrick Owens
20329 State Highway 249, Suite 350
Houston, Texas 77070

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, Consultant has been advised by the City and Consultant 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 Consultant may become entitled to hereunder and the total sum that the City shall become liable to pay to Consultant 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 Consultant 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 Consultant 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**

Consultant 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 Exhibit A, 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, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the Scope of Work, 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.

**SECTION XVIII.
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES**

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

**SECTION XIX.
MISCELLANEOUS PROVISIONS**

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

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

C. Consultant 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.

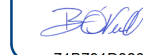
D. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore,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

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

EXECUTED on this ___ day of _____, 2024.

Company Name: Westwood Professional Services, Inc.

Signed by:



74B794D326BA455...

Name: Brian O'Neill

Title: Senior Director, Public Infrastructure

10/29/2024

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

TracyLynn Garcia, City Secretary

Westwood

October 17, 2024
Project No.: 0046201.00

Mr. Drew Huffman
Director of Public Works
CITY OF TOMBALL
501 James Street
Tomball, Texas 77375

Re: Professional Landscape Architecture Services
TOMBALL GATEWAY MONUMENTATION
Tomball, Harris County, Texas

Dear Mr. Huffman:

Westwood Professional Services, Inc. is pleased to submit this proposal to provide professional landscape architecture services relating to the referenced project. It is our understanding this is a conceptual design project consisting of gateway monument signs and corridor landscape improvements in association with various city gateways.

Based on our preliminary discussions and the information received to date, our perception of the project is described in the attached documents:

- Exhibit A – Scope of Services;
- Exhibit B – Compensation and Method of Payment;
- Exhibit C – Insurance;
- Exhibit D – Project Locations; and
- Exhibit E - Schedule

Westwood Professional Services, Inc. is pleased to have this opportunity to submit this proposal and look forward to working with you on this project. If the proposed agreement is acceptable to you as presented, please execute one copy of the agreement form and return one original copy to our office. If you have any questions or would like any additional information, please do not hesitate to call us at your convenience.

Sincerely,



Patrick R. Owens, P.L.A.

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EXHIBIT A to Agreement between the City of Tomball, Texas (“Client”) and Westwood Professional Services, Inc., (“Westwood”) for Consulting Services

EXHIBIT ‘A’ – SCOPE OF SERVICES

TOMBALL GATEWAY MONUMENTATION

PROJECT DESCRIPTION:

The project consists of It is our understanding this is a conceptual design project consisting of gateway monument signs and corridor landscape improvements in association with various city gateways. (PROJECT).

BASIC SERVICES:

- A. Conceptual Design
Westwood will provide Conceptual Design services for the typical gateway monument signs and associated landscape improvements that could be applied to the southern gateway and other priority locations. Up to nine (9) locations will be assessed for appropriateness and priority. (Exhibit D).

1. Telge Road and FM 2920
2. Business 249 South
3. Hufsmith-Kohrville and Holderrieth Road
4. FM 2920 and FM 2978
5. FM 2978 and Hufsmith Road
6. FM 2920 and Business 249 (Four Corners)
7. SH 249 Southbound Frontage Road near HCFCD M124 Channel
8. SH 249 Southbound Frontage Road near Spring Creek
9. FM 2920 North Entrance

1. Included in this item:
 - Up to four (4) design coordination meetings, charrettes, or presentations for purposes of developing the design with City staff, Councilmembers and TxDOT.
 - Create a working base file from digital data provided by the City, TxDOT and aerial images.
 - Develop up to two (2) conceptual alternatives, for City review and selection, that is scalable based on location chosen.
 - Establish a materials palette and planting patterns in various applications throughout the landscape improvement areas.
 - Develop 2d and/or 3d renderings, to depict the conceptual alternatives in enough detail to demonstrate design intent to the City. These services may include, but are not limited to hand renderings, computer generated renderings, and precedent photo image boards.
 - Develop a rough order of magnitude cost estimate for each concept to aid the City in selection of a preferred option and establishing a conceptual budget.

EXHIBIT A to Agreement between the City of Tomball, Texas (“Client”) and Westwood Professional Services, Inc., (“Westwood”) for Consulting Services

- Following the presentation of concept alternatives, the City will provide direction for a final concept. Westwood will make up to one (1) round of revisions to the preferred alternative.
- Establish an overall timeline for design/construction and assist the City in determining appropriately phased bid packages.

B. Public Engagement

Westwood will attend and lead the design presentations at milestone meetings with the public including the general public and/or specific stakeholders such as adjacent property owners or elected officials:

1. Included in this item:

- Attend up to two (2) meetings at key milestones to engage the public and/or specific stakeholders for the purpose of presenting design updates and gathering input.
- Prepare exhibits for each of the meetings to communicate the design status and facilitate input from the attendees.

2. Not included in this item:

- Additional meetings or exhibits beyond those described above.
- Meetings logistics such as scheduling venues, sending invites, advertising, food/refreshments, or other hosting services. This can be provided as an additional service if needed.

Services not included in this contract:

- *Environmental investigation.*
- *Wetlands determination and permitting.*
- *Survey services. This service can be added after the conceptual design phase if needed.*
- *Tree survey, location, or identification.*
- *MEP, structural, and geotechnical design services. These subconsultants to be added after the conceptual design phase if needed.*
- *Subsurface utility engineering or utility relocation.*
- *TDLR registration or RAS review.*
- *Construction document packages for phased bidding/construction.*
- *Construction staking.*
- *Any additional items not specifically stated in scope.*

END OF EXHIBIT 'A'

EXHIBIT B to Agreement between the City of Tomball, Texas (“Client”) and Westwood Professional Services, Inc., (“Westwood”) for Consulting Services

EXHIBIT ‘B’ – COMPENSATION AND METHOD OF PAYMENT

TOMBALL GATEWAY MONUMENTATION

COMPENSATION:

For all professional services included in EXHIBIT ‘A’, Scope of Services, Westwood shall be compensated a lump sum fee of \$51,700.00 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT ‘A’, including all labor materials, supplies, and equipment necessary to deliver the services.

Basic & Special Services

A. Conceptual Design	\$39,600.00
B. Public Engagement	<u>\$12,100.00</u>
TOTAL	\$51,700.00

METHOD OF PAYMENT:

Westwood shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of Westwood.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to Westwood plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times Westwood’s cost.

END OF EXHIBIT ‘B’

EXHIBIT C to Agreement between the City of Tomball, Texas (“Client”) and Westwood Professional Services, Inc., (“Westwood”) for Consulting Services

EXHIBIT C – INSURANCE

A. *Insurance.* Westwood shall, during the life of this Agreement, maintain the following insurances:

1. Commercial General Liability (occurrence form not less than):
 - \$2,000,000 General Liability
 - \$2,000,000 Products and Completed Operations Aggregate
 - \$1,000,000 Personal and Advertising Injury
 - \$1,000,000 Each Occurrence
 - \$10,000 Medical Expense
2. Commercial Automobile Liability (all scheduled auto, hired and non-owned autos):
 - \$1,000,000 Combined Single Limit
3. Umbrella
 - \$5,000,000 Aggregate
 - \$5,000,000 Each Occurrence
4. Workers Compensation
 - \$1,000,000 Each Accident
 - \$1,000,000 Policy Limit
 - \$1,000,000 Each Employee

Professional Liability Errors and Omissions Insurance. Westwood shall carry Professional Liability Errors and Omissions insurance with limited contractual liability in the amount of \$2,000,000 per claim and in the aggregate for the duration of this Agreement.

END OF EXHIBIT ‘C’

TOMBALL

EXHIBIT D



NOT TO SCALE

TOMBALL ENTRY MONUMENT LOCATIONS
PAGE 1 OF 1

EXHIBIT E to Agreement between the City of Tomball, Texas (“Client”) and Westwood Professional Services, Inc., (“Westwood”) for Consulting Services

EXHIBIT ‘E’ – SCHEDULE

TOMBALL GATEWAY MONUMENTATION

Westwood acknowledges the importance to the City of the project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule. The City understands, however, that Westwood's performance must be governed by sound professional practices. If, through no fault of Westwood, such periods of times or dates are changed, or the orderly and continuous progress of Westwood's services is impaired, or Westwood's services are delayed or suspended, then the time for completion of the services, and the rates and amounts of compensation, shall be adjusted equitably.

Estimated project timeline based on previous coordination with City staff:	
NTP	November 5, 2024
Kickoff Meeting & Site Assessments	November 2024
Conceptual Meeting #1	December 2024
Conceptual Meeting #2	January 2025
Public Meeting #1	February 2025
Conceptual Meeting #3	March 2025
Conceptual Meeting #4	April 2025
Public Meeting #2 & Conceptual Design Completion	May 2025

END OF EXHIBIT ‘E’