

**CONTRACT
FOR
SINGLE PHASE
PROFESSIONAL ENGINEERING SERVICES**

**FOR
«PROJNAME»
WBS NO. «wbsnum»**

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

THIS CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES ("Contract") is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas, and **«ENGINE»** (the "Engineer"), acting by and through its duly authorized officer. The initial addresses of the parties, which one party may change by giving notice to the respective other party, are as follows:

<u>City</u>	<u>Engineer</u>
Director Department of Public Works & Engineering City of Houston P.O. Box 1562 Houston, Texas 77251	«engineer», «engtitle» «ENGINE» «engaddr» «engcity», «engstate» «engzip»

RECITALS

WHEREAS, the City desires to obtain professional engineering services in connection with the planning and design of the Project hereinafter described; and

WHEREAS, the Engineer desires to provide such services in exchange for the fees hereinafter specified;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE 1

GENERAL

- 1.1 **Definitions:** As used in this Contract, the following terms shall have the meanings set out below. Additional terms are defined in Exhibit "A".
- 1.1.1 **City:** As defined in the preamble of this Contract, including its successors and assigns.
- 1.1.2 **Contract:** This agreement between Engineer and the City.
- 1.1.3 **Countersignature Date:** The date the Houston City Controller countersigns this Contract.
- 1.1.4 **Director:** The Director of the Department of Public Works and Engineering or such other person designated from time to time by the Director by notice to Engineer to administer this Contract on behalf of the City.
- 1.1.5 **Documents:** The reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, the original transparencies of all drawings, Construction Documents, computer programs including source and object codes, and other work products obtained by or prepared by Engineer as part of its services under this Contract. The Director shall specify the medium and format in which Engineer shall provide such documents.
- 1.1.6 **Engineer:** As defined in the preamble of this Contract, including its successors and assigns.
- 1.1.7 **Notice to Proceed:** A written communication from the Director that authorizes Engineer to begin performance of work, containing the following: Multiple Notices to Proceed should be anticipated for contracts that include multiple projects/subprojects.
- 1.1.8 **Project:** As identified in the title of this Contract.
- 1.1.9 **Project Schedule:** The schedule of project activities and events, showing initiation point, duration, and ending points using the form attached as Exhibit "B". The schedule will indicate time to be allowed for reviews by the City staff. The Project Schedule shall be drafted by Engineer in consultation with the Director, approved by the Director, and updated monthly at the time of invoice submittal.
- 1.1.10 **Raw Salary:** The actual cost of salary (annual base salary (excluding bonuses) divided by 2080) of an employee of Engineer for each hour during which such employee is actively performing services of benefit to the City and directly related to the Project. Maximum Raw Salary rates by employee category for the duration of the Contract are shown on Exhibit "D" attached hereto and, by reference, incorporated. The raw salary rates of Consultant shall not exceed the raw salary rates of Engineer without reasonable justification and prior written approval from the Director.
- 1.1.11 **Raw Salary Multiplier:** The Raw Salary Multiplier (when applied to Raw Salary) is «**rawsalmult**» and includes all payment due Engineer for Raw Salary, salary burdens, benefits, insurance, overtime

premium, payroll taxes, bonuses, overhead profit and clerical and management support, vacations, holidays and non-productive time of all kinds. The categories of service for which Raw Salary are payable are set out in Exhibit "D". All other categories of service are treated as overhead and are a part of Raw Salary Multiplier. Payments to contract personnel and personnel employed through employment agencies are not subject to enhancement by the Raw Salary Multiplier.

- 1.1.12 **Reimbursable Expenses:** Reimbursable Expenses are limited to the following: (1) The ordinary and reasonable cost of copying, printing, postage, delivery services, long distance telephone calls and any additional expenses listed in Exhibit "D" incurred by the Engineer in the course of his performance of services under this Contract, including any sales tax Engineer is legally required to pay for Reimbursable Expenses; and (2) the ordinary and reasonable costs of travel including meals and lodging to and from points outside of Houston by representatives of the Engineer, not-to-exceed the amounts established under the City's then current travel reimbursement policy for its employees, if such travel is reasonably necessary to accomplish a task and authorized by the Director.
- 1.1.13 **Subcontractor (also "Consultant"):** The professional Consultant or other professional entity subcontracted by Engineer to provide a portion of engineering services required under this Contract.
- 1.1.14 **Subcontract Cost:** The ordinary and reasonable cost of subcontract made by Engineer and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Contract.
- 1.1.15 **Subcontractor Markup:** A markup factor of eight percent (8%), which Engineer may apply only to subcontract invoices for services performed by the Subcontractor. Engineer shall not apply any Subcontractor Markup to engineering and administrative services performed by Engineer.

ARTICLE 2

DUTIES OF ENGINEER

- 2.1 **Services in General:** Engineer shall provide the City the specific tasks set forth in this Article and the professional engineering services described in Exhibit "A" for the fees hereinafter specified. Engineer's performance hereunder shall be performed with care and diligence and shall be in accordance with the standards prevailing in the State of Texas for engineering services performed for similar projects at the time such services are performed. .
- 2.2 **Coordinate Performance:** Engineer shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. Engineer shall keep such person(s) advised at a minimum on a biweekly basis of developments relating to the performance of this Contract, and Engineer shall at all appropriate times advise and consult with the Director.
- 2.3 **Time of Performance:** The time of performance for Engineer to complete the services listed in Exhibit "A" will be provided in the Notice to Proceed. Engineer acknowledges that time is of the essence.

2.4 **Consultants:** Engineer shall not subcontract any part of its Contract without approval by the Director. Engineer shall be responsible for services performed by Consultants to the same extent as if the services were performed by Engineer. Engineer shall replace any Consultant when requested to do so by the Director, who shall state the reasons for such request. Engineer shall provide the Director with a copy of any of its Consultant subcontracts at Director's request.

2.5 **Payment of Consultants:** Engineer shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Contract in accordance with the State of Texas Prompt Payment Act. Engineer agrees to protect, defend, and indemnify the City from any claims or liability arising out of Engineer's failure to make such payments. Disputes relating to payment of MWBE subcontractors shall be submitted to mediation in the same manner as any other disputes under the MWBE subcontract. Failure of Engineer to comply with the decisions of the mediator may, at the sole discretion of the City, be deemed a material breach leading to termination of this Contract.

2.6 **Insurance:** Engineer shall provide and maintain certain insurance and Endorsements in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

2.6.1 **Risks and Limits of Liability**

.1 Engineer shall maintain the following coverage and limits of liability:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$100,000 (each accident) • Bodily Injury by Disease \$100,000 (policy limit) • Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	\$1,000,000 per claim/aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

.2 If professional liability coverage is written on a "claims made" basis, Engineer shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of 2 years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

2.6.2 Form of Policies

- .1 The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however such approval shall never excuse non-compliance with the terms of this Section.

2.6.3 Issuers of Policies

- .1 The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide.

2.6.4 Additional Insured Parties

- .1 Each policy, except those for Worker's Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacement.

2.6.5 Deductibles

- .1 Engineer shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

2.6.6 Cancellation

- .1 Engineer must give the Director 30 days' advance written of any cancellation, non-renewal or material change to the policy. Within the 30 day period, Engineer shall provide other suitable policies in lieu of those about to be canceled or non-renewed so as to maintain in effect the required coverage. If Engineer does not comply with this requirement, the Director, at his or her sole discretion, may:
 - .1 immediately suspend Engineer from any further performance under this Contract and begin procedures to terminate for default, or
 - .2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Engineer under this Contract.

2.6.7 Subrogation

- .1 Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

2.6.8 Endorsement of Primary Insurance

- .1 Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract.

2.6.9 Liability for Premium

- .1 Engineer shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

2.6.10 Consultants

- .1 Engineer shall require all Consultants whose subcontracts exceed \$100,000 to provide proof of professional liability coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

2.6.11 Delivery of Policies

- .1 At the time this Contract is signed and as long as this Contract continues, Engineer must furnish to the Director certificates of insurance that meet the requirements of this Contract. These certificates must bear the Engineers name for which they are insured. If requested by the Director, Engineer must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Engineer shall provide updated certificates of insurance to the Director upon request.
- .2 Every certificate of insurance Engineer delivered for the Project shall:
 - .1 Be less than 12 months old;
 - .2 Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
 - .3 Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
 - .4 Be appropriately marked to accurately identify:
 - .1 All coverages and limits of the policy;
 - .2 Effective and expiration dates; and
 - .3 Waivers of subrogation, endorsement of primary insurance and additional insured language, as described above.
- .3 Engineer shall continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Engineer does not comply with this requirement, the Director, at his or her sole discretion, may:
 - .1 Immediately suspend Engineer from any further performance under this Contract and begin procedures to terminate for default, or
 - .2 Purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Engineer under this Contract.
- .4 The City shall never waive or be estopped to assert its rights to terminate this Contract because of its acts or omissions regarding its review of insurance documents.
- .5 Engineer shall, upon the City's request, deliver an assurance letter from Engineer's insurer stating that the insurer intends to issue Engineer a new policy that meets the terms of this Article.

2.6.12 Other Insurance

- .1 If requested by the Director, Engineer shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Engineer's operations under this Contract.

2.7 **Ownership of Documents:** Engineer shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes, and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Engineer, its agents, employees, contractors and subcontractors pursuant to this Contract (collectively "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.

2.7.1 Engineer agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Director, the Engineer shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.

2.7.2 Engineer shall execute all documents required by the Director to further evidence such assignment and ownership. Engineer shall cooperate with the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Engineer is requested and rendered pursuant to this Section, the City shall reimburse Engineer for all out-of-pocket expenses incurred by Engineer in rendering such assistance. On termination of this Contract or upon request by the Director, Engineer shall deliver all Works to the City. Engineer shall obtain written agreements in the form specified in Exhibit "J" from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.

2.7.3 The Engineer may, however, retain copies of such Documents. The Engineer shall have the right to use such copies internally, but the Engineer may not sell, license or otherwise market such Documents. Upon request by the Director, the Engineer shall deliver such Documents to the City.

2.7.4 Engineer does not represent that the Documents are or are intended to be, suitable for use on other Projects or extensions of this Project, to the extent that the Documents are site-specific. Any modification to the Engineer's work product or unintended use of same will be at the sole risk of the City.

2.8 Confidentiality

2.8.1 Engineer and each of its Consultants shall keep all Documents and City work products or data it receives in the strictest confidence. Engineer shall not divulge such records or the information contained therein except as approved in writing by the Director or as otherwise required by law.

2.9 Licenses and Permits

2.9.1 Engineer shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Engineer shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

2.10 **Compliance with Laws:** Engineer shall comply with all applicable state and federal laws and regulations and all provisions of the City of Houston Charter and Code of Ordinances.

2.11 Equal Employment Opportunity

2.11.1 Engineer shall comply with all provisions of the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

2.12 Minority and Women Business Enterprises Participation

2.12.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Contract.

2.12.2 Engineer shall make good faith efforts to award subcontracts or supply agreements in at least «mwbe_goals»% of the value of this Contract to MWBEs. Engineer acknowledges that it has reviewed the requirements for good faith efforts on file with the city's Office of Business Opportunity ("OBO") and will comply with them. To this end, Engineer shall maintain records showing:

- .1 Subcontracts and supply agreements with Minority Business Enterprises,
- .2 Subcontracts and supply agreements with Women's Business Enterprises, and
- .3 Specific efforts to identify and award subcontracts and supply agreements to MWBEs.

2.12.3 Engineer shall submit periodic reports of its efforts under this Section to the Director of Office of Business Opportunity in the form and at the times he or she prescribes.

2.12.4 Engineer shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding mediation in Houston, Texas if directed to do so by the Director of Office of Business Opportunity. If Engineer is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

2.13 Drug Abuse Detection and Deterrence

- 2.13.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Engineer shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.
- 2.13.2 Before the City signs this Contract, Engineer shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- .1 a copy of its drug-free workplace policy,
 - .2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F", and
 - .3 A written designation of all safety impact positions or, if applicable, a Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "H".
- 2.13.3 If Engineer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Contract or on completion of this Contract if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Engineer shall submit the Drug Policy Compliance Declaration to the CCODT within thirty days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Engineer begins work under this Contract.
- 2.13.4 Engineer also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Engineer's employee work force.
- 2.13.5 Engineer shall require that its subcontractors comply with the Executive Order, and Engineer shall secure and maintain the required documents for City inspection.

ARTICLE 3

DUTIES OF THE CITY

3.1 Compensation

- 3.1.1 The City shall not authorize any work under this Contract without issuing a Notice to Proceed.
- 3.1.2 Services:
- .1 Subject to the terms and conditions of this Contract, including Exhibit "D", the City shall pay Engineer a fee for complete performance of tasks described in a Notice to Proceed that shall not exceed the total of the following items:
 - .1 Salary charges calculated using a rate equal to or less than the applicable Salary Rate times hours actually worked, plus
 - .2 Subcontract Cost plus Subcontractor Markup for services that Engineer subcontracts.

- 3.2 **Method of Payment:** The City shall pay on the basis of monthly invoices submitted by Engineer and approved by the Director, showing the services performed and the fee. Invoices from Engineer shall show the hours

worked in the preceding month and the corresponding hourly rates for Services. The City shall pay Engineer within 30 days of the receipt and approval of the invoices. The City shall make payments to the Engineer at the address for notices.

3.3 **Limit of Appropriation:** Engineer recognizes that under certain provisions of the Charter of the City of Houston, the City may not obligate itself by contract to an extent in excess of an amount appropriated by the City Council and further recognizes that only **\$«totalappro»** has been appropriated and budgeted by City Council to pay the cost of services hereunder.

3.3.1 In the event the total appropriation is insufficient to compensate Engineer, Engineer may suspend its services at such time as the total appropriation is expended, but shall resume such services, if and when authorized by the Director, upon transfer of funds by the Director or appropriation of additional funds by the City Council.

3.4 **Access to Data**

3.4.1 In addition to its other duties under this Contract, the City shall, to the extent permitted by law, perform the following services:

.1 When requested to do so in writing by the Engineer, provide access to information such as existing drawings, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director's opinion will assist the Engineer in the performance of its services hereunder.

ARTICLE 4

TERM AND TERMINATION

4.1 **Contract Term**

4.1.1 This Contract is effective on the Countersignature Date and expires **«TERM»** years from the Countersignature Date ("Initial Term"). If the Director, at his or her sole discretion, makes a written request for renewal to Engineer at least 30 days before expiration of the then-current term, and if sufficient funds are allocated, then, upon expiration of the then-current term, this Contract is renewed for **«RENEWYRS»** year(s) upon the same terms and conditions. This Contract may only be renewed for **«RENEWTIMES»** additional term(s) beyond the Initial Term.

4.2 **Termination by the City for Convenience**

4.2.1 The Director may terminate Engineer's performance under this Contract at any time by giving seven days written notice to Engineer. As soon as possible, but not later than the effective date of such notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Contract and shall proceed to promptly cancel all existing orders and Consultant subcontracts insofar as such orders or subcontracts are chargeable to this Contract. Within seven days after the effective date of notice of termination, Engineer shall deliver copies of all Documents to the Director and submit an invoice showing in detail services performed under this Contract to the date of termination. The City shall then pay the prescribed fees to Engineer for services actually performed

under this Contract up to the date of termination less such payment on account of charges previously made, in the same manner as prescribed above. Any installments or lump sum fees shall be prorated in accordance with the progress of the Work at the effective date of termination. Engineer may, if necessary, submit invoices for vendor and Consultant charges reasonably necessary for the Project which are incurred prior to the effective date of termination and received by Engineer after its initial termination invoice.

4.2.2 Engineer understands and acknowledges that if the City determines not to proceed with this Contract, according to the terms of this Article, the Director shall provide Engineer with a written notice of his intent to terminate this Contract and this Contract shall terminate upon Engineer's receipt of such written notice. Any sums paid to Engineer prior to its receipt of such written notice plus any retained sums to which Engineer is entitled shall constitute full and complete compensation for the services rendered to the date of receipt of the written notice and Engineer agrees that it will not be entitled to any additional sums.

4.3 **Termination by the City for Cause:** City may terminate this Contract in the event of a material default by Engineer and a failure by Engineer to cure such default after receiving notice thereof, as provided in this Section. Default by Engineer shall occur if Engineer fails to observe or perform any of its duties under this Contract, if Engineer dies (if an individual) or for some other reason is unable to render services hereunder. Should such a default occur, the Director will deliver a written notice to Engineer describing such default and the proposed date of termination. Such date may not be sooner than the 7th day following receipt of the notice. The Director, at his or her sole option, may extend the proposed date of termination to a later date. If Engineer cures such default to the Director's reasonable satisfaction prior to the proposed date of termination, then the proposed termination shall be ineffective. If Engineer fails to cure such default prior to the proposed date of termination, then City may terminate its performance under this Contract as of such date, and Engineer shall deliver all Documents to the Director within seven days of the effective date of the termination. If the City's cost of obtaining completion of the work by other engineers, in combination with other direct costs sustained by the City as a result of the default, exceeds the remaining contract amounts unpaid to Engineer, the City shall not be obligated to make any further payment to Engineer. This provision does not relieve Engineer of any other obligation Engineer may have to the City.

4.4 **Termination by Engineer for Cause:** Engineer may terminate its performance only upon default of the City. Should such default occur, Engineer shall have the right to terminate all or part of its duties under this Contract as of the 14th day following the receipt by the City of a notice from Engineer describing such default and intended termination, provided: (1) such termination shall be ineffective if within the fourteen day period the City cures the default and (2) such termination may be stayed beyond such fourteen day period, at the sole option of Engineer, pending cure of the default.

ARTICLE 5

MISCELLANEOUS PROVISIONS

- 5.1 **Independent Contractor:** The relationship of Engineer to the City shall be that of an independent contractor.
- 5.2 **Business Structure and Assignments:** Engineer shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Engineer shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.
- 5.2.1 Engineer shall not delegate any portion of its performance under this Contract without the Director's prior written consent.
- 5.3 **Parties in Interest:** This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and Engineer only.
- 5.4 **Non-waiver:** Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.
- 5.5 **Applicable Laws:** This Contract is subject to and shall be construed in accordance with the laws of the State of Texas, the City Charter and Ordinances of the City of Houston, and to the extent required by any agreement between the City and any Federal agency, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction over this Project. This Contract is performable in Harris County, Texas.
- 5.6 **Notices:** All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.
- 5.7 **Captions:** The captions at the beginning of the articles and sections of this Contract are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Contract and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Contract.

- 5.8 **Acceptances and Approvals:** Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of Engineer, its employees, agents, Consultants, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by Engineer, its employees, agents, Consultants or suppliers pursuant to this Contract.
- 5.9 **Ambiguities:** In the event of any ambiguity in any of the terms of this Contract, it shall not be construed for or against any party hereto on the basis that such party did or did not authorize the same.
- 5.10 **Entire Agreement:** This Contract merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are not other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the subject matter hereof, whether written or verbal, antecedent or contemporaneous, with the execution hereof.
- 5.11 **Survival:** Engineer shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of the term of this Contract.
- 5.12 **ENGINEER'S DEBT: IF ENGINEER, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT ENGINEER HAS INCURRED A DEBT, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY ENGINEER IN WRITING. IF ENGINEER DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO ENGINEER UNDER THIS CONTRACT, AND ENGINEER WAIVES ANY RECOURSE THEREFOR. ENGINEER SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS CONTRACT.**
- 5.13 **Pay or Play:** The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Engineer has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions.

The Parties have executed this Contract in multiple copies, each of which shall be an original, as of this date countersigned by the City Controller of the City of Houston.

ENGINEER:

«**ENGNAME**»

By: _____
Name: «engineer»
Title: «engtitle»

CITY:

THE CITY OF HOUSTON

By: _____
Mayor

ATTEST:

By: _____
Corporate Secretary or Notary Public

Federal Tax Identification No. «taxID»

ATTEST:

By: _____
City Secretary

ATTEST & SEAL (if a corporation):
NOTARIZE & SEAL (if not a corporation):

APPROVED:

Director, Department of Public Works and Engineering

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED: _____

EXHIBIT "A"

SCOPE OF SERVICES

FOR

NEGOTIATED WORK ORDERS FOR PRE-ENGINEERING OF LOCAL STREET IMPROVEMENTS

WBS NO. «wbsnum»

1. GENERAL

- 1.1 The work to be performed shall consist of the execution of Pre-Engineering services and preparation of an engineering report.
- 1.2 The goal of pre-engineering is to develop specific detailed solutions to address highest needs areas. From these solutions, candidate project(s) will be defined with detailed scopes, cost estimates and benefits.
- 1.3 The problem area is defined as single or multiple needs. Highest needs will be ranked by the City, and will be provided to Engineer to perform pre-engineering. Geographic location will be provided for pre-engineering.
- 1.4 The Engineer will confirm the need(s)/problem(s) based on given locations and determine the extent of study area.
- 1.5 The pre-engineering with single or multiple needs areas shall be established by the work order.
- 1.6 The Engineer shall develop and analyze the following alternative solutions in pre-engineering as applicable:
 - 1.6.1 Full reconstruction of Streets
 - 1.6.2 Perform selective Point Repair
 - 1.6.3 Overlay existing asphalt Streets with asphaltic concrete
 - 1.6.4 Sheet Flow
 - 1.6.5 Conveyance of Storm water in street Right of Way
 - 1.6.6 Storm Sewer Pipe
 - 1.6.7 Storm water Detention
 - 1.6.8 Open Ditch
 - 1.6.9 Outfall Size Adequacy
 - 1.6.10 Other Alternatives
- 1.7 In the process of developing the pre-engineering with the alternative solutions, the Engineer shall consider:
 - 1.7.1 ROW Need/Acquisition (i.e. # of parcels)

- 1.7.2 Pavement Condition Rating (provided by the City)
- 1.7.3 Level of Service
- 1.7.4 Bridge Condition
- 1.7.5 Pedestrian/Bike improvements
- 1.7.6 Public Utilities
- 1.7.7 Private Utilities
- 1.7.8 Railroad Crossings & Grade Separations
- 1.7.9 Coordination with other Agencies (TXDOT, Harris County, Etc., if directed)
- 1.7.10 Permits
- 1.7.11 Other Needs

1.8 The Engineer shall prioritize the alternative solutions, recommend the best solution and present the pre-engineering findings to the City.

1.9 After the City selects the best alternative solution during the Planning Review Committee Meeting, the Engineer shall develop candidate project(s) with defined and detailed scopes, cost estimates and benefits.

This will include:

- 1.9.1 Description of Scope
- 1.9.2 Form 410 based on Planning level details
- 1.9.3 Estimate of ROW/Acquisition
- 1.9.4 Priority Score
- 1.9.5 Schedule of Work/Time
- 1.9.6 Sub-Project Sequencing, if applicable
- 1.9.7 Additional Reports needed as part of the project (i.e. Environmental Assessment)

1.10 The Engineer shall prepare and deliver an Engineering Report and present the findings to the City.

1.11 The Engineering Report will be signed and sealed by a Professional Engineer. It will include the prioritized alternative solutions and defined projects. Five (5) final written reports shall be submitted along with a electronically indexed and searchable document that includes a PDF of the report as well as the final models with shape_files and_worksheets used.

EXHIBIT "B"

PROJECT SCHEDULE

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"

SALARY AND REIMBURSEMENT TERMS



EXHIBIT "E"

CERTIFICATE OF INSURANCE FOR SERVICES

This certificate of insurance is provided for informational purposes only. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the referenced policies control over the terms of this certificate.

Prior to the beginning of work, the vendor shall obtain the minimum insurance and endorsements specified. Agents must complete the form providing all requested information and submit by fax, U.S. mail or e-mail as requested by The City of Houston. The endorsements listed below are required as attachments to this certificate; copies of the endorsements are also acceptable. PLEASE ATTACH ALL ENDORSEMENTS TO THIS FORM, AND INCLUDE THE MATCHING POLICY NUMBER ON THE ENDORSEMENT. Only City of Houston certificates of insurance are acceptable; commercial carriers' certificates are not.

Producer: _____

Street/Mailing Address: _____

City: _____ State: _____ Zip Code: _____ Phone#: _____

Insured: _____

Street/Mailing Address: _____

City: _____ State: _____ Zip Code: _____ Phone#: _____

WORKERS COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of *The City of Houston*

Waiver of Subrogation Endorsement #: _____

Carrier Name: NAIC#:		Carrier Phone Number:		
Address:		City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Workers Compensation Insurance				<input type="checkbox"/> W.C. Statutory Limits E.L. Each Accident \$ _____ E.L. Disease – Each Employee \$ _____ E.L. Disease – Policy Limit \$ _____
Employers' Liability				

COMMERCIAL GENERAL LIABILITY INSURANCE:

Endorsed with *The City of Houston* as Additional Insured and with a Waiver of Subrogation in favor of *The City of Houston*.

Additional Insured Endorsement #: _____

Waiver of Subrogation Endorsement #: _____

Carrier Name: NAIC#:		Carrier Phone Number:		
Address:		City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Commercial General Liability Insurance				Each Occurrence: \$ _____ Products/Completed Operations Aggregate \$ _____ General Aggregate \$ _____
<input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence				

AUTOMOBILE LIABILITY INSURANCE:

Endorsed with *The City of Houston* as Additional Insured and with a Waiver of Subrogation in favor of *The City of Houston*.

Additional Insured Endorsement #:

Waiver of Subrogation Endorsement #:

Carrier Name: NAIC#:		Carrier Phone Number:		
Address:		City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
<input type="checkbox"/> Any auto <input type="checkbox"/> All Owned autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Non-owned Autos				Combined Single Limit \$ _____ Bodily Injury (per person) \$ _____ Bodily Injury (per accident) \$ _____ Property Damage (per accident) \$ _____

OTHER INSURANCE COVERAGE: (i.e. Excess Insurance, or other; attach additional pages as needed)

Carrier Name: NAIC#:		Carrier Phone Number:		
Address:		City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Excess Liability Pollution Builder's Risk Other _____				\$ _____ \$ _____ \$ _____ \$ _____

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AGENT CERTIFICATION

THIS IS TO CERTIFY TO THE CITY OF HOUSTON that the insurance policies above are in full force and effect.

Name of Insurance Company:	Name of Authorized Agent:
Company Address:	Agent's Address:
City: _____ State: _____ Zip: _____	City: _____ State: _____ Zip: _____
Authorized Agent's Phone Number (including Area Code)	Original Signature of Authorized Agent
	X
	Date

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)
(Name of Company) (Engineer)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified.
The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection
and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's
Drug Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31.
Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human
Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions
performing on the City of Houston contract. The number of employees in safety impact positions
during this reporting period is_____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

Table with 4 columns: Random, Reasonable Suspicion, Post Accident, Total. Rows include Number Employees Tested, Number Employees Positive, Percent Employees Positive.

Initials Any employee who tested positive was immediately removed from the City worksite
consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance
with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are
within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "H"

**ENGINEER'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Engineer)
(Name of Company)

have authority to bind the Engineer with respect to its bid, and hereby certify that Engineer has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing _____.
(Project)

Engineer agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "I"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Engineer has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional engineering services as well as related support and consulting services ("Services").

2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.

3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.

4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.

5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.

6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.

7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS HEREOF, Subcontractor has executed this Assignment as of this _____ day of _____, 20_____.

Subcontractor

By:
Title:

EXHIBIT "J"

**FORM POP 2
CERTIFICATION OF AGREEMENT TO COMPLY WITH
PAY OR PLAY PROGRAM**

Available at <http://www.houstontx.gov/obo/popforms.html>

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EXHIBITS

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"J"	FORM POP 2 - CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

CITY OF HOUSTON

AND

«ENAME»

SINGLE PHASE

PROFESSIONAL ENGINEERING SERVICES

FOR

«PROJNAME»

WBS NO. «wbsnum»