

PROFESSIONAL SERVICES AGREEMENT
(Not Including Architectural or Engineering Services)
(Current as of 07-07-09)

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 _____ ("_____").

WITNESSETH:

WHEREAS, _____ 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 _____ in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

1.
SCOPE OF AGREEMENT

_____ 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 _____ compensation as stated in the sections to follow.

2.
CHARACTER AND EXTENT OF SERVICES

_____ shall do all things necessary to render the services and perform the Scope of Work in a professional and workmanlike manner. It is expressly understood and agreed that _____ is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that _____ 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.

3.
OWNERSHIP OF WORK PRODUCT

_____ agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by

_____ 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.

**4.
TIME FOR PERFORMANCE**

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

**5.
COMPLIANCE AND STANDARDS**

_____ 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 _____'s performance.

**6.
INDEMNIFICATION**

_____ shall and does hereby agree to indemnify, defend, and hold harmless the City, its officers, agents, and employees from any and all damages, loss or liability of any kind whatsoever, by reason of death or injury to property or third persons caused by the negligent act or omission of _____, its officers, agents, employees, invitees or other persons for whom it is legally liable, with regard to the performance of this Agreement, and _____ will, at its cost and expense, defend, pay on behalf of, and protect the City and its officers, agents, and employees against any and all such claims and demands. Such indemnity shall apply where the suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney fees arise in whole or in part from the negligence of _____.

**7.
COMPENSATION**

For and in consideration of the services rendered by _____ pursuant to this Agreement, the City shall pay _____ 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 \$_____, plus reimbursable expenses.

**8.
INSURANCE**

_____ shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," 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.

**9.
TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to _____. Upon receipt of such notice, _____ 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, _____ shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay _____ 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.

**10.
ADDRESSES, NOTICES AND COMMUNICATIONS**

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

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

City Manager
City of Tomball
401 W. Market Street
Tomball, Texas 77375

11.
LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, _____ has been advised by the City and _____ 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 _____ may become entitled to hereunder and the total sum that the City shall become liable to pay to _____ hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

12.
SUCCESSORS AND ASSIGNS

The City and _____ 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 _____ 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.

13.
DISCLOSURE OF INFORMATION

_____ 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.

14.
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.

15.
ADDITIONAL SERVICES

If authorized in writing by the City, _____ 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.

16.
CONFLICTS OF INTEREST

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

17.
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES

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

18.
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 _____, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

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

EXECUTED on the _____ day of _____ 200__.

ATTEST:

CITY OF TOMBALL, TEXAS

Doris Speer, City Secretary

Gretchen Fagan, Mayor

By: _____
Name: _____
Title: _____

EXHIBIT "A"

SCOPE OF WORK

AND

BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

EXHIBIT "B"
INSURANCE