

**CITY OF WOODWAY**  
**AGREEMENT FOR SURVEYING SERVICES**

THIS AGREEMENT is by and between City of Woodway (“City”) and  
\_\_\_\_\_ (“Consultant”).

Owner and Consultant hereby agree as follows:

**ARTICLE 1 – RECITALS**

- 1.01 City desires certain professional services hereinafter described.
- 1.02 CITY desires to engage CONSULTANT to provide these professional services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

**NOW, THEREFORE, IT IS AGREED** as follows:

**ARTICLE 2 – SCOPE OF PROJECT**

- 2.01 The scope of services to be performed by CONSULTANT under this Agreement is described in Exhibit A, Scope of Services, attached and incorporated by reference.

**ARTICLE 3 – RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT**

- 3.01 It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and

CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT'S work by CITY does not operate as a release of CONSULTANT from said obligation.

**ARTICLE 4 – PROJECT COORDINATION/STAFFING**

4.01 CITY

- A. Yost Zakhary, City Manager, will be the representative of CITY for all purposes under this Agreement.
- B. Mitch Davison, City Engineer is hereby designated as the PROJECT MANAGER and shall supervise the day to day progress and execution of the Agreement.

4.02 CONSULTANT

- A. CONSULTANT's services are unique and personal. CONSULTANT shall not assign or transfer its interest or obligation under this Agreement without the CITY's written consent. CONSULTANT shall not subcontract its duties under this Agreement without the CITY's written consent.
- B. CONSULTANT shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. \_\_\_\_\_ is hereby designated as the PROJECT DIRECTOR for CONSULTANT.
- C. CONSULTANT shall assign a PROJECT COORDINATOR to represent CONSULTANT during the day-to-day work on the Project. \_\_\_\_\_ is hereby designated as the PROJECT COORDINATOR for CONSULTANT.
- D. CONSULTANT shall assign additional key personnel as follows:
  - 1. \_\_\_\_\_
  - 2. \_\_\_\_\_
  - 3. \_\_\_\_\_
- E. In addition, CONSULTANT is specifically authorized to subcontract with the following sub-consulting firms to assist in providing the services required by this Agreement:
  - 1. \_\_\_\_\_
  - 2. \_\_\_\_\_
  - 3. \_\_\_\_\_
- F. CONSULTANT shall be responsible for employing or engaging all sub-consultants necessary for performance of the CONSULTANT'S scope of work. CONSULTANT shall manage, evaluate, and incorporate sub-consultants work into the project as necessary.
- G. All work on this project shall be accomplished by the above-named CONSULTANT'S personnel and sub-consultants. CONSULTANT shall not substitute personnel or sub-consultants without the CITY'S written consent.

**ARTICLE 5 – INDEPENDENT CONTRACTOR**

- A. It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor as defined in

Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

**ARTICLE 6 – DUTIES OF CONSULTANT**

- 6.01 CONSULTANT'S Services shall be furnished as described below and as more particularly described in Exhibit A, Scope of Services. Any changes in the Scope of Services must be approved in advance, in writing, by the City Engineer.
- 6.02 CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all studies, reports, designs, drawings, specifications, and other items furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its studies, reports, designs, drawings, specifications, and other items.
- 6.03 CONSULTANT represents that it is qualified to furnish the services described under this Agreement.
- 6.04 All documents, drawings and specifications relating the project prepared by CONSULTANT or CONSULTANT's approved sub-consultants shall be approved, signed, and sealed by professional engineers duly registered in the State of Texas for each required discipline. The Contract Documents prepared by CONSULTANT shall provide for a completed project that conforms to all applicable national, state and local construction codes and ordinances, building, fire, electrical, plumbing and occupancy codes and standards.
- 6.05 CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT. No sub-consultant of CONSULTANT will be recognized by CITY as such; rather, all sub-consultants are deemed to be the agents of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and sub-consultants, if any, and shall keep the work under its control. If any employee or sub-consultant of CONSULTANT fails or refuses to carry out

the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she shall be discharged immediately from the work under this Agreement on demand of CITY.

- 6.06 CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed in accordance with the requirement and intentions of this Agreement.

**ARTICLE 7 – DUTIES OF CITY**

- 7.01 CITY shall provide pertinent information regarding its requirements for the project.
- 7.02 CITY shall examine all documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of CONSULTANT'S work.

**ARTICLE 8 – TERM, PROGRESS AND COMPLETION**

- 8.01 The services to be performed under this Agreement shall commence and be completed as set forth in Exhibit B, Project Schedule.
- 8.02 It is understood and agreed that time is of the essence of this Agreement. CONSULTANT agrees to perform the services within the time limits set forth in Exhibit B.
- 8.03 CITY agrees to exercise due diligence in performing its tasks to implement the CONSULTANT'S timetable.
- 8.04

**ARTICLE 9 – PAYMENT**

- 9.01 Payment shall be made by the CITY only for services rendered and upon submission of monthly progress payment requests. In consideration for the full performances of the services and any reimbursable expenses set forth in this Agreement, CITY agrees to pay CONSULTANT a fee based on verified time and materials not to exceed \$ \_\_\_\_\_. Requests for payments shall be itemized and correspond to the various items of work described in Exhibit A and shall be based on the rate and cost schedule set forth in Exhibit C.
- 9.02 CITY reserves the right to pay CONSULTANT not more than \_\_\_\_% of the "not to exceed" amount until a \_\_\_\_% project review is complete and the CITY determines that \_\_\_\_% of the project work is complete. \_\_\_\_% project completion shall include completion of Tasks through as listed in Exhibit A.
- 9.03 Payment for extra work or changes in the work will not be made unless for work authorized in advance in writing by the City Engineer. Prior to commencing such extra work or changes, CONSULTANT and CITY shall agree upon an estimated not-to-exceed cost for such extra work. In no event shall CONSULTANT be paid for additional work that is necessary because of CONSULTANT'S errors or oversights.
- 9.04 CONSULTANT shall maintain complete and accurate records as to the number of hours worked by persons and the direct costs incurred during each phase under this Agreement. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to such books and records to the CITY at all times, shall permit the CITY to examine and audit those books and records, shall permit the CITY to make copies of those books and records, and shall permit the CITY to inspect all work data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement. All accounting records shall provide an understandable breakdown of costs charged to this Agreement. All records encompassed by this subparagraph, as well as supporting documentation, shall be

kept separate from other CONSULTANT documents and records and shall be maintained by CONSULTANT for three (3) years after CONSULTANT'S receipt of final payment under this Agreement.

- 9.05 CONSULTANT shall bill the CITY within thirty (30) days for all compensable activity on the project.
- 9.06 CITY shall pay CONSULTANT within thirty (30) days of receipt of billings. If CITY disagrees with any portion of a billing, the CITY shall promptly notify CONSULTANT of the disagreement, and the CITY and the CONSULTANT shall attempt to resolve the disagreement. CITY's payment of any amounts shall not constitute a waiver of any disagreement.

#### **ARTICLE 10 – CHANGES IN WORK**

- 10.01 CITY may order changes in scope or character of work, either decreasing or increasing the amount of CONSULTANT's services by amending this Agreement. In the event that such changes are ordered, CONSULTANT shall be entitled to full compensation for all work performed prior to receipt of notice of change. In no event shall CITY be liable for payment unless the amount of such extra compensation shall first have been agreed to in writing by CITY.
- 10.02 In the event that changes are ordered pursuant to this section, the schedule for progress and completion in Section 7 of this Agreement and compensation in Section 8 of this Agreement shall be adjusted by negotiation between CONSULTANT and CITY, subject to approval, if necessary by the Woodway City Council.

#### **ARTICLE 11 – CONFLICT OF INTEREST**

- 11.01 CONSULTANT understands that its professional responsibility is solely to CITY. CONSULTANT warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. CONSULTANT shall not knowingly, and shall take reasonable steps to ensure that, it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, CONSULTANT discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, CONSULTANT shall promptly sever the employment relationship.

#### **ARTICLE 12 – TERMINATION**

- 12.01 CITY may, by ten days written notice to CONSULTANT, terminate this Agreement in whole or in part at any time, either for CITY'S convenience or because of the failure of CONSULTANT to fulfill its agreement obligations. Upon receipt and within ten days of such notice CONSULTANT shall:
- A. Immediately discontinue all services affected (unless the notice directs otherwise); and
  - B. Deliver to CITY all data, documents, reports, estimates, summaries and such other information and materials as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in progress.
- 12.02 If the termination is for the convenience of CITY, CONSULTANT shall be compensated for all authorized work performed prior to notification of termination but no amount shall be allowed for anticipated profit on unperformed services.
- 12.03 If, after any notice of termination for failure to fulfill agreement obligations, it is determined by a court or other arbitrator that CONSULTANT had not so failed, the termination shall be deemed to have been

effected for the convenience of CITY. In such event, adjustment in the agreement price shall be made as provided in paragraph (B) of this section.

- 12.04 CONSULTANT may terminate this Agreement or suspend work on the project upon sixty (60) days written notice to CITY, but only in the event of substantial failure of performance by CITY or in the event CITY abandons or indefinitely postpones the Project.
- 12.05 Upon termination of this Agreement or suspension of work on the project by either CITY or CONSULTANT, all duties of CITY and CONSULTANT as set forth in Sections 5 and 6 herein above shall terminate.

#### **ARTICLE 13 – STATUS OF REPORTS**

- 13.01 All documents furnished to CONSULTANT by the CITY and all reports and supportive data prepared by the CONSULTANT under this Agreement are the CITY'S property and shall be delivered to the CITY upon the completion of CONSULTANT'S services or at the CITY'S written request. All reports, information, data, and exhibits prepared or assembled by CONSULTANT in connection with the performance of its services pursuant to this Agreement are confidential until released by the CITY to the public, and the CONSULTANT shall not make any of these documents or information available to any individual or organization not employed by the CONSULTANT or the CITY without the written consent of the CITY before any such release.

#### **ARTICLE 14 – INSURANCE**

- 14.01 The CONSULTANT shall provide and maintain:
- A. Commercial General Liability Insurance, occurrence form, with a limit of not less than \$1,000,000.00 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.
  - B. Automobile Liability Insurance, occurrence form, with a limit of not less than \$1,000,000.00 each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
  - C. Errors and omissions insurance in the minimum amount of \$1,000,000.00 aggregate.
  - D. Workers Compensation in at least the minimum statutory limits.
  - E. General Provisions for all insurance. All insurance shall:
    1. Include the City of Woodway, its elected and appointed officials, employees, and agents as additional insureds, except errors and omissions, with respect to this Agreement and the performance of services in this Agreement. The coverage shall contain no special limitations on the scope of its protection to the above-designated insureds. The additional insured requirement shall apply only to the coverage specified in paragraphs A and B.
    2. Be primary with respect to any insurance or self-insurance programs of City, its elected and appointed officials, employees, and agents.
    3. Be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance.
    4. No changes in insurance may be made without the written approval of the City Attorney's Office.
    5. NOTICE OF CANCELLATION: The city requires 30 days written notice of cancellation, except for 10 days' notice in case of nonpayment of premium. Additionally, the notice statement on the

certificate should not include the wording “endeavor to” or “but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives”.

**ARTICLE 15 – NONASSIGNABILITY**

15.01 Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

**ARTICLE 16 – INDEMNITY**

16.01 With regard to design professional services performed by CONSULTANT, CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents, from and against any and all claims, loss, liability, damage, and expense to the extent arising out of CONSULTANT’s negligence, recklessness, or willful misconduct. CONSULTANT agrees to defend CITY, its elected and appointed officials, employees, and agents, against any such claims to the extent of CONSULTANT’s negligence, recklessness, or willful misconduct.

16.02 With regard to CONSULTANT’s activities other than professional services as discussed above, CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents, from and against any alleged claims, loss, liability, damage, and expense arising out of CONSULTANT’s performance of this Agreement, except those claims arising out of CITY’s active negligence or willful misconduct. CONSULTANT agrees to defend CITY, its elected and appointed officials, employees, and agents, against any such claims.

**ARTICLE 17 – WAIVERS**

17.01 The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

**ARTICLE 18 – SEVERABILITY**

18.01 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**ARTICLE 19 – COSTS AND ATTORNEYS FEES**

19.01 Attorney fees in an amount not exceeding \$85 per hour per attorney, and in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney’s fees arising out of an action, or actions to enforce the provisions of this Agreement.

**ARTICLE 20 – NON-DISCRIMINATION**

20.01 CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its sub-consultants shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the Texas Fair Employment and Housing Act.

**ARTICLE 21 – MEDIATION**

21.01 Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the Texas State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

21.02 The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

**ARTICLE 22 – LITIGATION**

22.01 CONSULTANT shall testify at CITY'S request if litigation is brought against CITY in connection with CONSULTANT'S services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT'S wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT'S standard hourly rates at the time of actual testimony.

**ARTICLE 23 – NOTICES**

23.01 All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

23.02 To CITY:

Mitch Davison  
City Engineer  
City of Woodway  
924 Estates Drive  
Woodway, TX 76712

23.03 To CONSULTANT:

**ARTICLE 24 – AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENTS**

24.01 This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

24.02 This document may be amended only by written instrument, signed by both CITY and CONSULTANT.



**ARTICLE 25 – AUTHORITY TO ENTER INTO AGREEMENT**

25.01 CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

**ARTICLE 26 – MISCELLANEOUS**

26.01 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

26.02 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

26.03 Other Provisions

1. Laws of the State of Texas apply and venue is McLennan County.

IN WITNESS WHEREOF, Owner and Consultant have signed this Agreement. Counterparts have been delivered to Owner and Consultant. All portions of the Contract Documents have been signed or have been identified by Owner and Consultant or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2018(which is the Effective Date of the Agreement).

OWNER:

CONSULTANT

CITY OF WOODWAY \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

City of Woodway \_\_\_\_\_

\_\_\_\_\_

922 Estates Drive \_\_\_\_\_

\_\_\_\_\_

Woodway, Texas 76712 \_\_\_\_\_

\_\_\_\_\_

License No.: \_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

END OF DOCUMENT