



Harris-Galveston Subsidence District

REQUEST FOR QUALIFICATIONS RFQ # 2016-003

PROFESSIONAL INFORMATION TECHNOLOGY SERVICES FOR THE DEVELOPMENT OF A PERMIT AND ENFORCEMENT APPLICATION AND DATABASE

GENERAL INFORMATION

The Harris-Galveston Subsidence District (HGSD) is soliciting Statements of Qualifications (SOQs) from Professional Information Technology Consultant(s) to provide necessary professional information technology services required to develop a modular permit and enforcement application and database.

The HGSD will contract directly with the Consultant(s) for professional information technology services using the HGSD's standard Professional Services Agreement and associated work orders.

The proposed schedule for this Request for Qualifications is as follows:

Release RFQ to Consultants:	Friday, September 02, 2016, 12:00 PM
Pre-Submittal Conference	Monday, September 12, 2016, 2:00 PM
Deadline for Questions and Inquiries:	Monday, September 19, 2016, 10:00 AM
SOQ Submissions Due:	Monday, September 26, 2016, 2:00 PM

INTRODUCTION

The Harris-Galveston Subsidence District was created in 1975 with the purpose to cease and prevent subsidence within Harris and Galveston Counties by regulating the use of groundwater. Subsidence has been a long standing problem in the Harris, Galveston, and surrounding counties, with total subsidence near the Gulf of Mexico reaching nearly 15 feet. Subsidence can contribute to flooding, infrastructure damage, and faulting.

Since 1975 groundwater regulation set forth by HGSD has resulted in increased aquifer water-levels and slowing or cessation of subsidence in regulatory areas closest to the Gulf of Mexico. However, the western most regulatory area is still progressing towards conversion to alternative sources of water and consequently subsidence continues to

occur. The permitting process is the primary function of the District to assure successful completion of the District Mission, as well as to efficiently communicate, track, and enforcement the Districts regulatory plan requirements.

Permits are issued to all users of groundwater within the District. Adequate tracking of permits allows the district to enforce conversion requirements, track total water demand, track groundwater and surface water use, spotlight enforcement needs, and track administrative/enforcement fees and payment. Currently, the District utilizes a proprietary application and SQL database that was created over a decade ago that has reached the end of its operational lifespan due to a stagnant application technology stack and maintenance toolset that eliminates the ability to cost-effectively upgrade.

The District will replace the current system with a custom, full-featured permitting system for records processing directed by built-in workflows and subject to rules enforced by a simple rules engine. The system will allow staff to track the stage flow of permit, provide work item queues with reports, and summarize key data into dashboards. The user system will incorporate automation into the current workflow.

In addition, the envisioned system will include a permittee portal allowing for greater engagement with permittees and well owners. The permittee portal will allow for permittees to view their current permit, make payments of fees, view historical information, and submit renewal applications.

SCOPE OF CONSULTANT SERVICES

It shall be each prospective firm's responsibility to assemble a team of qualified professionals as needed to meet resource and discipline/area services requirements. The HGSD has no objection to firms who may wish to consider teaming with sub-consultants so that the prospective firm's team has the ability and the depth of resources to offer the required level of services within the HGSD's required schedule and budget.

The scope of Consultant services may generally include but may not be limited to the following areas of Work.

A. General Project Scope

The selected firm will be expected to complete the following general tasks, which may include but not necessarily be limited to:

- Development of web based application framework that address the following general requirements:
 - Manage and track records of unpermitted wells
 - Manage and track permitting records from application to permit
 - Generate, manage, and track fees and payments

- Generate form letters for communication with well owners and retain electronic copies
- Implement modifiable rules for the validation and processing of records
- Implement simple finite state workflow including
 - Queues for work items related to processing or exception handling
 - Work items for generation of letters and other communication artifacts
- Provide capabilities for analysis of wells records to aid in compliance and governance
- Implement Ground Water Credits (GWC) program tracking
- Provide visibility into data consistency for both structured (wells, applications, permits) and unstructured (supporting letters, electronic copies of scanned paper applications, etc.) data
- Provide capabilities for the tracking and management of the education and other outreach programs.
- Utilize an ASP.NET MVC (Model-View-Controller) framework for all applications
- Utilize Microsoft SQL Server for backend database

The selected firm is expected to have expertise in the following general areas:

- Microsoft Internet Information Server in a multi-node network load balanced cluster environment
- Microsoft SQL Server 2014 in a 2-node failover cluster environment
- Development of multi-instance applications
- Utilization of a rules based workflow engine
- Development or customization of controlled auditable systems
- Development of user application interfaces in an intranet web environment
- Data Migration

CONSULTANT SELECTIONS

A. This RFQ does not commit HGSD to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of qualifications and subsequent discussions, interviews and/or presentations in anticipation of a contract.

B. HGSD reserves the right to:

1. Reject any and all Statement of Qualifications received.
2. Cancel the entire RFQ.
3. Remedy technical errors in the RFQ process.
4. Negotiate with any, all, or none of the respondents to the RFQ.
5. Waive informalities and irregularities.
6. Modify the selection process.
7. Modify the project scope.

C. Qualifications Based Selection Criteria: Submitting firm SOQs will be evaluated and ranked based upon the responses provided relative to the content requirements of this RFQ as provided in this section and as further detailed in the following section titled INSTRUCTIONS TO RESPONDING FIRMS.

The evaluation criteria and the corresponding maximum point score associated with each evaluation criteria is as follows:

- Responsiveness to Requirements of this RFQ **(10 points)**;
- Relevant Experience, Expertise, and Qualifications of the Primary Information Technology Firm and any Subconsultant Firms **(25 points)**:
 - Prime Information Technology Firm Experience and Capability **(20 points)**;
 - Subconsultant Firm(s) Experience and Capability (if no subconsultant firm(s) are proposed, allocate all points to prime consultant firm) **(5 points)**;
- Relevant experience, expertise, and qualifications of the proposed individual Project Manager **(15 points)**:
 - General Individual Experience and Capability **(6 points)**;
 - Availability During Project Duration **(3 points)**;
 - Experience Relevant to the Specific Aspects and Anticipated Services of this RFQ **(6 points)**;
- Relevant experience, expertise, and qualifications of the proposed Lead Technical Professional **(10 points)**:
 - General Individual Experience and Capability **(4 points)**;
 - Availability During Project Duration **(2 points)**;
 - Experience Relevant to the Specific Aspects and Anticipated Services of this RFQ **(4 points)**;
- Proposed Support Resources (management, administrative and technical team depth/support services, experience, expertise and qualifications) **(10 points)**:
 - General Team Experience and Capability **(4 points)**;
 - Availability During Project Duration **(2 points)**;
 - Experience Relevant to the Specific Aspects and Anticipated Services of this RFQ **(4 points)**;
- Project approach **(20 points)**:

- General Philosophy (6 points);
 - Approach to Planning (8 points);
 - Approach to Performance (8 points);
 - QA/QC (8 points);
- Interview (10 points)*
 - * The HGSD reserves the right to select directly from received SOQs and not perform interviews. In the event interviews are not performed, Interview point score will be added in full to each firm's point score.

TOTAL POSSIBLE POINTS: 100 POINTS

1. A copy of the HGSD Standard Professional Services Agreement (Contract) to be executed for the Work of this RFQ is provided for review/reference in Exhibit A of this document. **Note: The HGSD will not entertain requests of firms to modify, change, or in any way alter the above referenced standard work order contract, including Article 9 – INDEMNIFICATION language (See also attached Exhibit A). Firms that cannot or are unwilling to meet the terms and conditions of Article 9, should not submit an SOQ. No exception shall be made.**
2. Type and limits of insurance coverage. **Note: HGSD standard insurance requirements are stated in Article 11 – INSURANCE of HGSD's Standard Work Order Professional Services Agreement, a copy of which is provided in Exhibit A of this document. Firms that cannot meet these minimum standards prior to executing an agreement will not be considered. No exception shall be made.**
3. A pre-submittal conference will be held at 2:00pm on September 12, 2016 at the District Office located at 1660 W. Bay Area Blvd., Friendswood, TX, 77546.

INSTRUCTIONS TO RESPONDING FIRMS

A. Points of Contact

1. Direct all questions regarding this Request for Qualifications (RFQ) to

Harris-Galveston Subsidence District
 Brian Ladd
 IT Systems Administrator
bladd@subsidence.org

Questions received and answers provided will be posted to the RFQ site at <http://www.hgsubsidence.org>

Any other contact by the offeror/firm with HGSD staff, consultants, or advisors regarding this contract may eliminate that firm from contract award consideration.

2. The Statement of Qualifications (SOQs) will be reviewed and selected respondents may be identified for further discussions, interviews, and/or formal presentations to be conducted at a later date.

B. Statement of Qualifications (SOQ) Requirements

1. SOQs shall not exceed twenty (20) pages including attachments; and excluding transmittal letter, covers and plain section dividers.
2. SOQs shall be printed on single side 8 ½” by 11” pages with not less than 1 inch margins, not less than 1.25 line spacing and not less than 11 point font.
3. Statements of Qualifications (SOQs) may be submitted electronically via, email to bladd@subsidence.org, or one (1) printed and bound original and one (1) thumb drive containing an electronic version of the SOQ delivered to the HGSD Office located at 1660 W. Bay Area Blvd, Friendswood, TX, 77546, **Attn: Brian Ladd**. SOQs will be accepted prior to September 26, 2016 at 2:00 P.M., CST.

Reponses received after the above-mentioned date and time will not be considered, and will be returned to the offeror in the condition they were delivered.

All communications regarding this RFQ must be made in writing and electronically to Brian Ladd, IT Systems Administrator, bladd@subsidence.org. Any other contact by the offeror/firm with HGSD staff, consultants, or advisors regarding this RFQ may eliminate that firm from contract award consideration.

4. Transmittal Letter – Provide a transmittal letter signed by an officer of the respondent firm who has the authority to commit the firm to the Project.
5. General Information of the respondent firm (please submit information in this order and in the list format):
 - a. Firm name
 - b. Corporate address
 - c. Address, phone number and fax number of Texas office supporting this Project
 - d. Primary contact name, phone number and email address

- e. Website address
- f. Federal tax identification number
- g. Number of years firm in business
- h. Type of organization(s) (individual, partnership, or corporation)
- i. Date of organization (month and year)
- j. Location(s) of business
- k. Name(s) and date(s) of predecessor organization(s)
- l. Total number of employees located in Texas office(s) supporting this Project
- m. Number and type of professionals and corresponding registrations/certifications located in Texas office(s) supporting this Project
- n. Type and limits of insurance coverage - **Note: HGSD standard insurance requirements are stated in Exhibit A of this document. Firms who cannot meet these minimum standards will not be considered.**

6. Project Team Organization Chart

7. Experience of the individual Project Manager

Provide the following information to clearly demonstrate the experience and capabilities of the individual Project Manager proposed for this Project:

- a. Name
- b. Position/Title within respondent firm
- c. Role/responsibility for this Project, including availability and time commitment to the Project
- d. Current location and location during execution of the possible project(s) resulting from this RFQ.
- e. Education
- f. Applicable registrations or certifications
- g. Years of experience directly related to the following:
 - 1) Microsoft Internet Information Server in a multi-node network load balanced cluster environment
 - 2) Microsoft SQL Server 2014 in a 2-node failover cluster environment
 - 3) Development of multi-instance applications
 - 4) Utilization of a rules based workflow engine
 - 5) Development or customization of controlled auditable systems
 - 6) Development of user application interfaces in an intranet web environment
 - 7) Data Migration
- h. Experience relevant to the specific aspects and anticipated services for the design aspects of the various project types, to

include a summary of experience and qualifications, and detailed descriptions of no more than five (5) recent assignments of similar nature using the following format:

- 1) Assignment Name/Location/Client
 - 2) Project description
 - 3) Work/services performed for the Project
 - 4) Completion date of Project and/or key deliverables
 - 5) Budget and schedule management and adherence
 - 6) Client contact name, title/position, current phone number and email address
- i. Professional relationships with key representatives of any resource/regulatory agencies whose approval may be required for any activities during the entire planning, design, permitting and construction process.

8. Experience of the Lead Technical Professional

Provide the following information to clearly demonstrate the experience and capabilities of the Lead Technical Professional proposed for this Project:

- a. Name
- b. Position/Title within respondent firm
- c. Role/responsibility for this Project, including availability and time commitment to the Project
- d. Current location and location during execution of the possible project(s) resulting from this RFQ.
- e. Education
- f. Applicable registrations or certifications
- g. Years of experience directly related to the following:
 - 1) Microsoft Internet Information Server in a multi-node network load balanced cluster environment
 - 2) Microsoft SQL Server 2014 in a 2-node failover cluster environment
 - 3) Development of multi-instance applications
 - 4) Utilization of a rules based workflow engine
 - 5) Development or customization of controlled auditable systems
 - 6) Development of user application interfaces in an intranet web environment
 - 7) Data Migration
- h. Experience relevant to the specific aspects and anticipated services for the design aspects of the various project types, to include a summary of experience and qualifications, and detailed descriptions of no more than five (5) recent assignments of similar nature using the following format:
 - 1) Assignment Name/Location/Client

- 2) Project description
 - 3) Work/services performed for the Project
 - 4) Completion date of Project and/or key deliverables
 - 5) Budget and schedule management and adherence
 - 6) Client contact name, title/position, current phone number and email address
 - i. Professional relationships with key representatives of any resource/regulatory agencies whose approval may be required for any activities during the entire planning, design, permitting and construction process.
9. Support Resources
- a. Name(s)
 - b. Position/Title
 - c. Firm name
 - d. Role/responsibility for this Project
 - e. Current location and location during execution of the possible project(s) resulting from this RFQ.
 - f. Education
 - g. Applicable registrations or certifications
 - h. Years of experience directly related to the specific aspects and anticipated services pertaining to this RFQ
 - i. Experience relevant to the specific aspects and anticipated services pertaining to this RFQ.
10. Project Understanding and Approach
- Provide a thorough discussion revealing the respondent firm's approach to the planning and performance of engineering services for the Project and understanding of possible project(s) resulting from this RFQ. Include information on general philosophy, approach to planning, approach to performance, and quality assurance/quality control (QA/QC).
11. Other Information
- Provide other information pertinent to the Project regarding respondent firm, sub-consultants and support resources.
12. Potential Conflicts of Interest
- Firms seeking to do business with HGSD are responsible for maintaining compliance with the applicable provisions of Chapter 176, Local Government Code, related to disclosure of conflicts of interest. The Conflict of Interest Questionnaire is available for downloading on the Texas Ethics Commission's website at <http://www.ethics.state.tx.us/forms/CIQ.pdf> and should be submitted to the HGSD with the submittal. The completed Conflict of Interest Questionnaire will be posted on HGSD's website as required by

Chapter 176. Additionally, the selected firm will be required to complete Texas Ethics Form 1295 online prior to execution of any contract.

C. Equal Employment Opportunity Requirements

The HGSD highly encourages applicants to maintain non-discriminatory practices in their employment programs. This means applicants should not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, or disability.

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT CONTRACT NO. _____

This Professional Services Agreement (the "Agreement") is made and entered into effective as of the ____ day of ____, 201_, by and between the Harris-Galveston Subsidence District, a conservation and reclamation district of the State of Texas, ("HGSD") with general and administration offices located at 1660 W. Bay Area Blvd., Friendswood, TX, 77546

and

_____, a [corporation, LP, LLC, partnership] organized under the laws of the State of _____, ("CONSULTANT") with principal offices located at _____.

HGSD and CONSULTANT are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

The Parties hereby agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

1.1 CONSULTANT agrees to perform professional services (the "Services") related to _____ as are requested from time to time by HGSD, which Services shall be set forth more particularly in Work Orders, the form of which is attached hereto as Attachment B, issued from time to time by HGSD and accepted by CONSULTANT. Each Work Order shall constitute a separate and independent agreement between CONSULTANT and HGSD.

1.2 Work Orders shall contain the schedule, price, and payment terms applicable to the Services within the scope of such orders. Time is of the essence to this Professional Services Agreement and all Work Orders will incorporate and be governed by and subject to the terms, conditions, and other provisions of this Agreement. Work Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of CONSULTANT, returned to HGSD and countersigned by HGSD. The specific terms of a Work Order may not be modified unless such modifications are agreed to in writing by HGSD and CONSULTANT.

1.3 Unless the Work Order specifically states the term, condition, or other provision of this Agreement that is being modified, terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated in to a Work Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the balance of the terms, conditions, and other provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate HGSD to issue, or CONSULTANT to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of them, from entering into agreements other than this Agreement for professional services or other work.

ARTICLE 2 – TERM OF AGREEMENT

2.1 This Agreement shall be effective for a term of one (1) year from the date first set forth above and shall be automatically renewed without action by either Party for subsequent terms of one year unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as the Services under such Work Orders have been completed; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Work Order for cause and HGSD shall have the right to terminate any Work Order for convenience.

2.3 Consultant's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration of termination of this Agreement or any Work Order.

ARTICLE 3 – COMPENSATION AND PAYMENT

3.1 HGSD agrees to pay CONSULTANT, and CONSULTANT agrees to accept, as full and complete compensation for Services properly performed by CONSULTANT in accordance with this Agreement and applicable Work Order, the rates and charges agreed upon for a specific Work Order. Paragraphs A.1 or A.2 of Attachment A, which is attached hereto and incorporated herein by reference, shall be used to negotiate the compensation payable for each Work Order issued hereunder.

3.2 On or before the tenth day of each calendar month, CONSULTANT shall submit an invoice to HGSD, together with backup documentation required by HGSD and releases and waivers in forms acceptable to HGSD, covering all Services performed under any Work Order by CONSULTANT and its subconsultants, subcontractors and suppliers during the preceding calendar month. CONSULTANT shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested for each such Work Order, (iv) the amount previously paid for each such Work Order, (v) descriptions of Services performed during the prior month for each such Work Order, and (vi) the total payment requested by such invoice. HGSD shall pay the amount it agrees to be due within thirty (30) days after receipt of such complete invoice and backup documentation.

3.3 HGSD shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect HGSD from loss or expected loss because of:

(a) Services that are not in compliance with this Agreement or the applicable Work Order or any failure of CONSULTANT to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;

(b) third party suits, stop notices, claims or liens arising out of Services performed for which CONSULTANT is responsible pursuant to this Agreement and asserted or filed against HGSD or any of their respective property or portion thereof or improvements thereon provided that CONSULTANT fails to provide HGSD with sufficient evidence that CONSULTANT's insurance is adequate or shall cover the claim(s);

(c) uninsured damage to any Indemnified Party which results from CONSULTANT's failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by

CONSULTANT or any of its subcontractors, subconsultants, or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or

(d) any failure of CONSULTANT to pay any subcontractor, subconsultant, or supplier of CONSULTANT the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. CONSULTANT will not include in its billings to HGSD any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

3.4 CONSULTANT agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from HGSD, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by CONSULTANT out of such payment made to CONSULTANT by HGSD. Further, provided that HGSD paid CONSULTANT in accordance with the terms of this Agreement and any particular Work Order, CONSULTANT shall defend and indemnify HGSD against any claims for payment asserted or filed by any such person or entity against HGSD, its project or property or CONSULTANT.

ARTICLE 4 – STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; EQUAL EMPLOYMENT OPPORTUNITY; THIRD PARTY REVIEW

4.1 CONSULTANT shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer (collectively, the CONSULTANT’s “Standard of Care”).

4.2 Consistent with its Standard of Care, CONSULTANT shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep HGSD apprised of the status of Services, coordinate its activities with HGSD, and accommodate other activities of HGSD at sites that Services impact. CONSULTANT shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 CONSULTANT shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. Construction contractors of HGSD shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all parties, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with HGSD. However, CONSULTANT shall notify HGSD if it observes violations of safety regulations or ordinances or quality of work deficiencies by HGSD’s construction contractors. CONSULTANT shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that CONSULTANT provides to HGSD any estimate of costs associated with construction, it is recognized by the Parties that neither CONSULTANT nor HGSD has control over the cost of the labor, materials, or equipment, over a construction contractor’s methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, CONSULTANT

cannot and does not warrant or represent that bids or negotiated prices will not vary from HGSD's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by CONSULTANT.

4.5 With respect to providing Services hereunder, CONSULTANT agrees to meet at the time applicable (i) Equal Employment Opportunity ordinances, rules and regulations, and (ii) Affirmative Action ordinances, rules and regulations.

4.6 CONSULTANT acknowledges and agrees that projects of HGSD may be subject to review and approval by other third parties. Accordingly, as and when requested by HGSD, CONSULTANT shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 CONSULTANT does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If HGSD reuses any Work Product without CONSULTANT's specific written verification or adaptation, such reuse will be at the risk of HGSD, without liability to CONSULTANT.

ARTICLE 5 – COST RECORDS

5.1 CONSULTANT shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by CONSULTANT under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, CONSULTANT shall maintain records of direct costs for which HGSD is charged. HGSD shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. HGSD's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third party charges only. Except to the extent audit rights are granted to HGSD by applicable law, HGSD shall have no audit rights with respect to the portion of Work Orders compensated on a lump sum basis.

ARTICLE 6 – OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by CONSULTANT, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of HGSD are and shall remain HGSD's property upon creation (collectively, "Work Product") provided, however, that Work Product shall not include pre-existing proprietary information of CONSULTANT, its subconsultants, subcontractors, and/or suppliers ("CONSULTANT Proprietary Information"). To this end, CONSULTANT agrees and does hereby assign, grant, transfer, and convey to HGSD, its successors and assigns, CONSULTANT's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. CONSULTANT confirms that HGSD and its successors and assigns shall own CONSULTANT's right, title, interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, CONSULTANT hereby grants HGSD a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties CONSULTANT Proprietary Information in connection with HGSD's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of HGSD or otherwise in connection with property or projects in which HGSD has an interest (whether by HGSD or a third party). CONSULTANT shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all

of its subconsultants, subcontractors, and suppliers. Work Product is to be used by CONSULTANT only with respect to the project in connection with which such Work Product was created and is not to be used on any other project. CONSULTANT and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of HGSD's copyright or other reserved rights. CONSULTANT shall deliver all copies of the Work Product to HGSD upon the earliest to occur of HGSD's request, completion of Services in connection with which Work Product was created, or termination of this Agreement. CONSULTANT is entitled to retain copies of its Work Product for its permanent project records.

6.2 CONSULTANT agrees that all information provided by HGSD in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used, or disclosed by CONSULTANT without the prior written consent of HGSD, except as may be necessary for CONSULTANT to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (a) was at the time of receipt by CONSULTANT otherwise known by CONSULTANT by proper means;
- (b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to CONSULTANT;
- (c) subsequently is developed independently by CONSULTANT, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of CONSULTANT's being a party to this Agreement;
- (d) becomes known or available to CONSULTANT from a source other than HGSD and without breach of this Agreement by CONSULTANT or any other impropriety of CONSULTANT;
- (e) enters the public domain without breach of the Agreement by or other impropriety of CONSULTANT;
- (f) becomes available to CONSULTANT by inspection or analysis of products available in the market;
- (g) is disclosed with the prior written approval of HGSD;
- (h) was exchanged between HGSD and CONSULTANT and ten (10) years have subsequently elapsed since such exchange; or
- (i) is disclosed to comply with the Texas Open Records Act or in response to a court order to comply with the requirement of a government agency.

6.3 CONSULTANT shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as CONSULTANT normally takes to preserve and safeguard its own proprietary or confidential information.

6.4 CONSULTANT will advise HGSD of any patents or proprietary rights and any royalties, licenses, or other charges which CONSULTANT knows or should know in the exercise of its Standard of Care impacts any design provided by CONSULTANT in connection with any Services, and obtain HGSD's prior written approval before proceeding with such Services. CONSULTANT shall not perform patent searches or evaluation of claims, but will assist HGSD in this regard if requested, on the basis set forth herein. There will be no charge for CONSULTANT's existing patents.

ARTICLE 7 – INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, CONSULTANT shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. CONSULTANT shall not be considered a partner, affiliate, agent, or employee of HGSD and shall in no way have any authority to bind HGSD to any obligation.

ARTICLE 8 – WARRANTY PERIOD; GUARANTEES

8.1 If within a period of one (1) year following completion of Services under a Work Order, it is discovered that such Services were not performed in accordance with CONSULTANT's Standard of Care, CONSULTANT shall be obligated to re-perform such Services at its own expense. If CONSULTANT is unable to re-perform such Services as expediently or in the manner required for HGSD's needs, CONSULTANT agrees to pay HGSD's reasonable costs associated with having another consultant perform such corrective services. The obligations of CONSULTANT under this Paragraph 8.1 are in addition to other rights and remedies of HGSD available to it pursuant to this Agreement or applicable law.

8.2 CONSULTANT agrees to assign HGSD the warranty or guarantee of any subconsultant, subcontractor, supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by CONSULTANT hereunder and cooperate and assist HGSD in HGSD's enforcement thereof. CONSULTANT's responsibility with respect thereto is limited to such assignment, cooperation, and alliance. The representations and warranties of CONSULTANT under this Agreement and Work Orders are made in lieu of any other warranties or guarantees and CONSULTANT makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and CONSULTANT shall have no liability to HGSD based upon any theory of liability that any such other warranty was made or breached.

ARTICLE 9 – INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS HGSD AND ITS BOARD, DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, FINES, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE AND NECESSARY COURT COSTS, EXPERTS' FEES AND ATTORNEY'S FEES) (COLLECTIVELY, "LOSSES"), ARISING IN FAVOR OF OR BROUGHT BY ANY THIRD PARTY, TO THE EXTENT CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY CONSULTANT, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY WORK ORDER, EVEN IF SUCH LOSSES ARE CAUSED IN PART BY THE NEGLIGENCE OR

FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE; PROVIDED, HOWEVER, THAT CONSULTANT'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS SHALL NOT EXTEND TO THE PORTION (IF ANY) OF SUCH LOSSES THAT ARE CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE OTHER THAN CONSULTANT OR ITS AGENT OR EMPLOYEE OR SUBCONTRACTORS OF ANY TIER.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS REQUIRED UNDER SECTION 11.1(f) HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, CONSULTANT SHALL, UPON FINAL ADJUDICATION OF THE LOSSES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEY'S FEES INCURRED TO DEFEND AGAINST THE LOSSES IN PROPORTION TO CONSULTANT'S LIABILITY TO ANY THIRD PARTY FOR SUCH LOSSES.

ARTICLE 10 – LIMITATION OF LIABILITY

10.1 Neither Party hereto shall be liable to the other Party or its affiliates for any loss of profit, loss of revenue, loss of use or any other indirect, consequential or special damages excluding fines and penalties levied by a regulatory agency, even if caused by the sole or concurrent negligence of a party, whether active or passive, and even if advised of the possibility thereof.

10.2 Nothing herein shall be construed as creating any personal liability on the part of any board member, any officer, employee, or agent of HGSD.

ARTICLE 11 – INSURANCE

11.1 **General Requirements.** CONSULTANT shall, at all times during the performance of Services pursuant to Work Orders issued under this Agreement and for not less than two years after the completion of any Services, provide and require all subconsultants and subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas and acceptable to HGSD and with forms acceptable to HGSD, which coverage will protect CONSULTANT from claims set forth below which may arise out of or result from CONSULTANT's Services and operations under this Agreement and any Work Order for which CONSULTANT may be legally liable, whether such Services or operations are by CONSULTANT or a subconsultant or subcontractor of CONSULTANT or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and meeting not less than the minimum requirements set forth in this Article 11. Such insurance is to be provided at the sole cost of CONSULTANT and all subconsultants and subcontractors. The terms "subconsultant" and "subcontractor" for the purposes of this Article 11 shall include subconsultants and subcontractors of any tier.

(a) **Kinds of Claims**

- (1) claims under workers' and workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to CONSULTANT's Services to be performed;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of CONSULTANT's employees;
- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than CONSULTANT's employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by CONSULTANT, or (ii) by another person;
- (5) claims for damages other than to CONSULTANT's work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (7) claims involving contractual liability insurance applicable to CONSULTANT's indemnification obligations under this Agreement; and
- (8) claims for errors and omissions in the provision of professional consulting services of the kind rendered by CONSULTANT pursuant to this Agreement.

(b) **Policies and Minimum Limits of Liability**

<u>Kinds of Insurance:</u>		<u>Limits of Liability*:</u>
A.	Workers' Compensation Texas Operations Employer's Liability	Statutory Bodily Injury by Accident \$1,000,000 Each Accident Bodily Injury by Disease \$1,000,000 Each Employee Bodily Injury by Disease \$1,000,000 Policy Limit
B.	Commercial General Liability Including but not limited to: 1. premises/operations 2. independent contractor 3. products and completed operations 4. personal injury liability with employment exclusion deleted 5. contractual	\$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Each Occurrence \$2,000,000 Personal and Advertising Injury \$300,000 Fire Damage Liability
C.	Professional Liability	\$1,000,000 per claim \$3,000,000 Aggregate
D.	Business Automobile Liability Including all Owned, Hired, and Non-owned Automobiles	\$1,000,000 Combined Single Limit Per Occurrence
E.	Umbrella Liability	\$1,000,000 Per Occurrence

	\$1,000,000 Aggregate Bodily Injury and Property Damage
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* Aggregate limits are per 12-month policy period unless otherwise indicated; defense costs shall be excluded from limits of liability of each policy other than Professional Liability Insurance; Commercial General Liability Insurance coverage limits shall be on a per-project basis.

(c) All required insurance shall be maintained with responsible insurance carriers acceptable to HGSD and lawfully authorized to issue insurance of the types and amounts set forth in this Article 11. Carriers should have a Best's Financial Strength Rating of at least "A-" and a Best's Financial Size Category of Class VIII or better, according to the most current edition of *Best's Key Rating Guide, Property-Casualty United States* or be of sufficient size and financial strength as adjudged by HGSD to meet the financial obligations evidenced in the certificate of insurance.

(d) All certificates shall be in a form reasonably acceptable to HGSD and each certificate must state to the extent permitted by Texas Insurance Code Chapter 1811 that the policy may not expire or be cancelled, materially modified, or nonrenewed unless the carrier and/or CONSULTANT gives HGSD thirty (30) days advance written notice. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, CONSULTANT shall, prior to such expiration, supply HGSD with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required by this Agreement. Any renewal or replacement policies shall be in form and substance satisfactory to HGSD and written by carriers acceptable to HGSD and meeting the requirements of this Article 11. CONSULTANT shall or shall cause the applicable carrier or carriers to give written notice to HGSD within thirty (30) days of the date on which total claims by any party against insurance provided pursuant to this Article 11 reduce the aggregate amount of coverage below the amounts required by this Article 11. In addition, CONSULTANT shall or shall cause the applicable carrier or carriers to provide HGSD with amendatory riders or endorsements to the Commercial General Liability Insurance policy that specify that the coverage limits apply on a per-project basis.

(e) With respect to all policies required in this Article 11, as soon as practicable prior to execution of this Agreement, CONSULTANT shall deposit with HGSD true and correct original certificates thereof, bearing notations or accompanied by other evidence satisfactory to HGSD that the requirements of this Article 11 are being met. If requested to do so by HGSD, CONSULTANT shall also furnish the originals or certified copies of the insurance policies for inspection including but not limited to copies of endorsements.

(f) All policies of insurance and certificates, with the exception of Professional Liability and Workers' Compensation Insurance, shall name the INDEMNITEES as additional insureds. Without limiting the foregoing, CONSULTANT's Commercial General Liability Insurance policy shall name the INDEMNITEES as additional insureds pursuant to ISO Additional Insured Endorsements CG 20-10-10-01 and CG 20-33-10-01 or their combined equivalents. Further, the CONSULTANT shall provide the INDEMNITEES any defense provided by its Commercial General Liability Insurance policy to the fullest extent allowed by law.

(g) CONSULTANT hereby waives all rights of recovery and damages against the INDEMNITEES to the extent such damages are covered or should have been covered by the insurance obtained or required to be obtained by CONSULTANT under this Agreement. All of CONSULTANT's policies of insurance, with the exception of Professional Liability Insurance, shall include a waiver of subrogation in favor of the INDEMNITEES.

(h) The Parties intend that the CONSULTANT'S insurance shall be primary and non-contributing with respect to any other insurance maintained by HGSD and all policies of insurance obtained by CONSULTANT shall be endorsed to be primary and non-contributing with respect to any other insurance maintained by HGSD.

(i) If any policy required to be purchased pursuant to this Article 11 is subject to a deductible, self-insured retention or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible, self-insured retention, or similar self-insurance mechanism shall be the sole responsibility of CONSULTANT in the event of any loss and CONSULTANT hereby waives any claim therefore against any INDEMNITEE.

(j) CONSULTANT shall require and cause its subconsultants and subcontractors to purchase and maintain the insurance policies set forth in Paragraph 11.1(b) above with limits of liability commensurate with the amount of each subconsulting or subcontract agreement, but in no case less than \$500,000 per occurrence. CONSULTANT shall provide copies of insurance certificates for all such insurance to HGSD prior to any subconsultant's or subcontractor's performance of any Services.

(k) If CONSULTANT fails to procure or to maintain in force the insurance required by this Article 11, HGSD may secure such insurance and the costs thereof shall be borne by CONSULTANT. CONSULTANT shall reimburse HGSD the cost of such insurance plus ten percent (10%) administrative charge within ten (10) days after billing by HGSD. Any sum remaining unpaid fifteen (15) days after billing by HGSD shall bear interest at the rate of twelve percent (12%) per annum until paid by CONSULTANT. Except to the extent prohibited by Subchapter C of Chapter 151 of the Texas Insurance Code, CONSULTANT shall defend, indemnify, and hold harmless the INDEMNITEES from and against any and all losses, claims, damages, and expenses (including, without limitations, court costs, costs of defense, and attorney fees), that any INDEMNITEE may incur as a result of CONSULTANT's failure to obtain or cause to be obtained the specific endorsements or insurance required pursuant to this Agreement. Failure of any INDEMNITEE to identify any deficiency in the insurance forms provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance and to cause such insurance to be maintained.

(l) CONSULTANT's compliance with the provisions of this Article 11 shall not be deemed to constitute a limitation of CONSULTANT's liability with respect to claims covered by insurance provided or required pursuant to this Article 11 or in any way limit, modify, or otherwise affect CONSULTANT's obligation under this Agreement or otherwise. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONSULTANT or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

(m) If requested by HGSD, CONSULTANT shall furnish or shall cause to be furnished any such other insurance or limits as HGSD may reasonably deem necessary for any Work Order or Orders and the cost thereof shall be charged to HGSD by appropriate modification of any such Order(s).

ARTICLE 12 – CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 HGSD may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. In the event that any such change, through no fault of CONSULTANT, shall impact CONSULTANT's compensation or schedule, then (a) such changes shall be authorized by written change order issued by HGSD and accepted by CONSULTANT, and (b) an equitable adjustment shall be made to the Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

12.2 HGSD may for convenience terminate this Agreement, any Work Order issued under this Agreement, or CONSULTANT's right to perform Services under this Agreement or any Work Order by at any time giving seven (7) days written notice of such termination. In such event, HGSD shall have the right but not the obligation to assume all obligations and commitments that CONSULTANT may have in good faith undertaken or incurred in connection with the Services terminated, and HGSD shall pay CONSULTANT, as its sole and exclusive remedy, for Services properly performed to date of termination and for reasonable costs of closing out such Services provided HGSD has pre-approved such costs. CONSULTANT shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, CONSULTANT shall invoice HGSD for all services performed by CONSULTANT prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by HGSD and HGSD's receipt of all Work Product.

12.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that HGSD terminates this Agreement or any Work Order for cause, CONSULTANT shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to HGSD's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, CONSULTANT is declared in default and/or terminated by HGSD under any Work Order with HGSD, HGSD shall have the right to offset and apply any amounts which might be owed to HGSD by CONSULTANT against any earned but unpaid amounts owed to CONSULTANT by HGSD under any Work Order. In the event any Work Order is terminated by HGSD, CONSULTANT shall promptly deliver to HGSD all Work Product with respect to such terminated Work Order.

ARTICLE 13 – FORCE MAJEURE

13.1 Any delay in performance or non-performance of any obligation other than an obligation to make a payment as required under this Agreement or any Work Order, of CONSULTANT contained herein shall be excused to the extent such failure of non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by CONSULTANT and (ii) prevents the performance of Services.

13.2 If CONSULTANT is affected by Force Majeure, CONSULTANT shall promptly provide notice to HGSD, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five days after CONSULTANT first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on CONSULTANT's

ability to communicate with HGSD. CONSULTANT shall use its commercially reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14 – SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 HGSD and CONSULTANT bind themselves and their successors, executors, administrators and permitted assigns to the other party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

14.2 No right or interest in this Agreement or any Work Order shall be assigned by CONSULTANT or HGSD without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Work Order with respect to which CONSULTANT has elected to subcontract, CONSULTANT will notify HGSD in writing of the identity of the particular subcontractor, subconsultant or supplier CONSULTANT intends to employ for the performance of such part of the Services and the scope of Services it will perform. HGSD shall have the right within twenty-one (21) calendar days of such written notice to disallow CONSULTANT's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by CONSULTANT as a result of such disallowance shall be borne by HGSD.

ARTICLE 15 - SEVERABILITY

15.1 If any provision or portion thereof of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect.

ARTICLE 16 – LICENSE REQUIREMENTS

16.1 The CONSULTANT and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Work Order.

ARTICLE 17 – ENTIRE AGREEMENT

17.1 This Agreement and all Work Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties. Venue shall lie in Montgomery County, Texas.

ARTICLE 18 – GOVERNING LAW

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to this Agreement, any Work Order or any Services which HGSD and CONSULTANT have been unable to resolve within thirty (30) days after such

dispute arises, a senior representative of CONSULTANT shall meet with the General Manager of HGSD at a mutually agreed upon time a place not later than forty-five (45) days after such dispute arises to attempt to resolve such dispute. In the event such representatives are unable to resolve any such dispute within fifteen (15) days after such meeting, either Party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator pursuant to the American Arbitration Association Construction Industry Mediation Rules. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in construction, engineering, and/or public works operations. The mediation shall be conducted within thirty (30) days of the selection or appointment of the mediator, as applicable. The mediation shall be held at a mutually agreeable location in Montgomery County, Texas. If the Parties are unable to agree on a location, the mediation shall be held at the offices of the American Arbitration Association closest to Conroe, Texas.

19.2 Any dispute arising out of or relating to this Agreement or any Work Order or any Services not resolved pursuant to Article 19.1, shall be resolved, by litigation or mutual agreement of the Parties, binding arbitration conducted pursuant to the Construction Industry Rules of the American Arbitration Association then in effect. Any arbitration shall be final and binding upon the parties and any award rendered therein shall be enforceable by any court of competent jurisdiction

ARTICLE 20 – CONFIDENTIALITY

20.1 Neither CONSULTANT nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of HGSD, unless such materials have first been reviewed and approved in writing by HGSD. This provision shall not apply to mandatory reports which CONSULTANT or its subconsultants are required by law to file with governmental authorities.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year herein above first written.

CONSULTANT:

HGSD:

Harris-Galveston Subsidence District

By: _____

By: _____

Michael J. Turco
General Manager

Date

Date

ATTEST:

ATTEST:

Secretary

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, HGSD will compensate CONSULTANT on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Work Order. Professional is defined as a manager, supervisor, engineer, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

X.XX for professional and non-professional staff working at CONSULTANT or its subcontractor, subconsultant, or vendor offices

X.XX for professional and non-professional staff working in the field during construction or at HGSD offices for a minimum period of six (6) consecutive months

X.XX for construction inspectors working in the field

(b) EXPENSES

“Billable Expenses” include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). “Billable Expenses” include: subconsultants; travel expenses to and from locations outside Harris and Montgomery Counties; and copies of all deliverables submitted to HGSD. All Local vehicle use outside Harris and Montgomery Counties will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

HGSD will compensate CONSULTANT on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Work Order. HGSD may ask CONSULTANT for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary breakdown showing the labor hours and cost, subconsultant costs, and other direct costs included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. CONSULTANT will submit and HGSD will pay monthly invoices based on the mutually agreed upon percentage of the project completed.

ATTACHMENT B

This Work Order is issued subject to, is governed by and incorporates by reference that certain Professional Services Agreement, Contract No. _____, between the HGSD and CONSULTANT effective _____, 201_.

Work Order Date: _____

CONSULTANT: _____

Type of Compensation: Lump Sum, Cost Plus -Time and Materials with Not-To-Exceed Maximum

Compensation: _____

Location of Services: (County) _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: See Attached.

Agreed to by:

HGSD

By: _____

Name: Michael J. Turco

Title: General Manager

and

[CONSULTANT]

By: _____

Name: _____

Title: _____