



**REQUEST FOR QUALIFICATIONS
RFQ # 2025-001**

**PROFESSIONAL SERVICES FOR THE DETERMINATION OF THE POTENTIAL IMPACT
OF THE HGSD WATER CONSERVATION PROGRAM ON TOTAL WATER DEMAND AND
WATER EFFICIENCY WITHIN THE DISTRICT**

GENERAL INFORMATION

The Harris-Galveston Subsidence District (HGSD) is seeking Statement of Qualifications from qualified professionals to engage in professional services agreements for the determination of the potential impact of the HGSD Water Conservation Program on the Total Water Demand within the District.

The HGSD will contract directly with the Consultant for professional technical 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: | February 11, 2025 |
| Pre-submittal conference*: | March 3, 2025 at 1:30 CST |
| Deadline for questions and inquiries: | April 30, 2025 |
| SOQ submissions due: | May 15, 2025 at 5:00 pm CDT |

* This conference is not required and will be held virtually.

INTRODUCTION

The Harris-Galveston Subsidence District (HGSD) was created in 1975 to prevent subsidence within Harris and Galveston Counties by regulating the use of groundwater. HGSD's [Regulatory Plan](#) describes the policies enacted with an overall goal to reduce groundwater withdrawal to a level that no longer contributes to subsidence.

The HGSD Water Conservation Program (WCP) has been a vital component of HGSD's efforts to prevent subsidence. Beginning in 1994, the WCP has evolved to provide a wide-range of water-conservation educational activities and initiatives. Currently, the WCP includes the following initiatives: the elementary school education program, an outdoor irrigation efficiency campaign, the SmarterAboutwater online education channel, and a water conservation grant program.

The elementary school program began in 1994 with the HGSD developed "Learning to be WaterWise" School Program. The School Program included water conservation education to 3rd to 6th grade students through customized lesson plans and a water conservation take-home demonstration kit. The elementary education program has evolved over its 25 years of teaching within the District. Since the 2022-2023 school year, the elementary school program expanded to include water resources and subsidence education under

the new name of H2O Lab! with additional online resources, tutorials, and activities for teachers and students.

The outdoor irrigation water efficiency campaign began in 2016 when HGSD became a sponsor of Texas A&M AgriLife Extension Service's "Water My Yard" campaign. Water My Yard offers free lawn watering recommendations for any user who subscribes for notifications through either email or mobile application. As of January 2025, the Water My Yard program has over 50,000 subscribers statewide.

The HGSD established the smarteraboutwater.org website to provide a "one-stop-shop" for online resources related to water efficiency. The website provides resources for local water managers, businesses, and the general public on effective water efficiency measures and tools to communicate that information to water users, customers, and constituents.

In 2019, HGSD initiated a Water Conservation Grant Program to support projects that align with the HGSD's water conservation mission and empower communities to make changes toward a future where water is valued, and water conservation is a lifestyle. Grant applications are accepted year-round and include three categories: conservation measures, water efficiency, and water conservation research. As of January 2025, HGSD has awarded 12 grant projects and reimbursed grantees with over \$850,000. Some examples of awarded grant projects involve leak detection and repair, installation of automatic metering infrastructure (AMI), and integration with smart irrigation systems.

SCOPE OF WORK

The purpose of this effort is to evaluate the HGSD Water Conservation Program to determine the potential impact of the program on the total water demand within the District and offer actionable recommendations to support future water conservation initiatives. The following is an outline of the scope of service envisioned for this project. **Consultants should note that some tasks include requests to address specific elements in the Project Understanding and Approach section of the proposal.**

Task 1. Develop and document a methodology to determine the potential water conservation for current initiatives of the Water Conservation Program

The Consulting Team will develop a methodology to determine water savings for each WCP initiative. Methodology should include both direct (fixing leaks, high efficiency fixtures, water reuse, etc..) and indirect conservation measures (education induced behavioral changes, online media influence, etc..). Information on the WCP initiatives can be found on the District's website. Determined water savings should consider the potential implementation of water conservation measures and/or behavioral changes. All research and analysis associated with Task 1 will be included in a draft technical memorandum and presented to HGSD prior to the start of Task 2.

In the Project Understanding and Approach, describe techniques, including credible equations or algorithms, which would be utilized for each Water Conservation Program Initiative.

Task 2. Analyze Results and Propose Recommendations

The Consulting Team will implement the methodology obtained from Task 1 and determine the water conservation impact (potential reduction in total water demand at reasonable implementation/adoption rates). Based on the results and consideration of HGSD's Regulatory Plan and Water Conservation Strategic Plan, the Consulting Team will propose recommendations for increased water conservation actions and calculate associated potential savings as appropriate for each current initiative and/or recommended initiative.

In the Project Understanding and Approach, provide an example scenario for at least one Water Conservation Program that highlights data analytics, offers suggestions for refinement, and estimates potential water savings. Please include references or examples from case studies to support the analysis.

Task 3. Prepare Documentation

A comprehensive draft and final report with an executive summary will be compiled for the study that will be based on the task 1 technical memoranda and results of task 2. Draft documentation, including the executive summary, will be presented to the HGSD for comment prior to the submittal of the final report.

Data Management Requirements

All data developed as part of the project shall be delivered to the HGSD in an appropriate database. Geographic information systems (GIS) data should be provided in an ArcGIS File Geodatabase and/or ArcPro project based on a standard schema developed in coordination with the HGSD. Additionally, a SharePoint site shall be created by the Consulting Team and utilized as the document repository for all documentation associated with the project. This SharePoint site must be accessible for appropriate HGSD staff and be used as the primary data exchange between the Consulting Team and HGSD staff.

The files delivered to HGSD should include, at a minimum, the following, as appropriate:

- All original spatial and tabular data referenced and/or source data;
- All spatial and tabular datasets created and/or manipulated for the purpose of analyses;
- Relevant metadata documenting the authoritative source and date of the original data according to the HGSD Geospatial Data Management Plan (2019); and
- ArcGIS Online applications, such as Storymaps, Dashboards, or other services, as appropriate.

CONSULTANT EVALUATION AND SELECTION PROCESS

It shall be each prospective consulting team's responsibility to identify qualified professionals as needed to provide resource and discipline/area services within the HGSD's required schedule and budget.

The HGSD has attempted to provide a comprehensive statement of requirements through this solicitation for the work contemplated. Written proposals must present the Consulting Team's qualifications and understanding of the work to be performed. Consulting Teams are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the HGSD may properly evaluate capabilities to provide the requested services.

By submission of a proposal, the prospective Consulting Team acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFQ. Further, the prospective Consulting Team acknowledges that subjective judgements must be made by the HGSD during this process.

- 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:
 - a) Reject any and all Statement of Qualifications received.
 - b) Cancel or terminate the entire RFQ process.
 - c) Remedy technical errors in the RFQ process.
 - d) Negotiate with any, all, or none of the respondents to the RFQ.
 - e) Waive or decline to waive any informalities and irregularities in any statement of qualifications or responses received.

- f) Modify the selection process.
- g) Negotiate or modify the project scope or services to be provided.

C. Qualifications Based Selection Criteria: 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 are shown in the table below.

| Criteria | Points |
|--|---------------|
| <i>Consulting team introduction.</i> Considerations for this evaluation criterion include the consulting team's overall suitability for this project and the effectiveness and efficiency of the proposed organizational structure. | 5 |
| <i>Experience of consulting team based on previous work.</i> Considerations for this evaluation criterion include the consulting team's experience and history of success with projects having similar scope of services. | 20 |
| <i>Project manager competence and qualifications.</i> Considerations for this evaluation criterion include project manager's individual experience and demonstrated capability to lead projects having similar scope of services. | 15 |
| <i>Lead technical professional(s) competence and qualifications.</i> Considerations for this evaluation criterion include lead technical professionals' experience and demonstrated technical expertise to lead development of technical work products for with projects having similar scope of services. | 10 |
| <i>Technical support staff competence and qualifications.</i> Considerations for this evaluation criterion include support personnel and sub-consultant experience and demonstrated expertise to perform projects having similar scope of services. | 5 |
| <i>Demonstration of project understanding and approach.</i> Considerations for this evaluation criterion include the project team's overall understanding of the project scope and issues as well as the clarity, thoroughness and creativity of the project approach, identification of key issues associated with the scope of services and the consulting team's approach to addressing those issues, as well as the project team's approach to quality management. | 35 |
| <i>Project schedule and staff availability.</i> Considerations for this evaluation criterion include the availability of key staff during project duration, the proposed project schedule, and approach to managing deadlines. | 5 |
| Interview (optional) | 5 |
| <i>Total</i> | <i>100</i> |

D. Interview

The HGSD reserves the right to select directly from received SOQs and not perform interviews. In the event interviews are not performed, the interview point score will be added in full to each consulting team's point score.

INSTRUCTIONS TO RESPONDING FIRMS

A. Points of Contact

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

Harris-Galveston Subsidence District
contracts@subsidence.org

Questions received and answers provided will be posted to the RFQ site at
<https://hgsubsidence.org/about/working-with-hgsd/>

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. Unless otherwise stated in the proposal, answers to all questions, inquiries, and requests for additional information will be issued in the form of Addenda on the HGSD website. If addenda are issued, receipt of each Addenda shall be acknowledged and included in the SOQ.
3. 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 ten (10) pages including attachments; and excluding transmittal letter, covers, addenda pages and section dividers.
2. SOQs shall be prepared with 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. SOQs shall be submitted electronically via email to contracts@subsidence.org with subject line labeled “Attn: SOQ Submission RFQ 2025-001.” **Reponses received after the SOQ deadline will not be considered.**
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. **Consulting team introduction. (up to 5 points)**
Briefly introduce your team, providing a summary of the administration, organization, and staffing of your team, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core team which will undertake this engagement. Include location(s) of project manager and lead technical professional(s). Provide the 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. **Experience of consulting team based on previous work (up to 20 points)**
Provide information relevant to the consulting team’s history of success based on projects or studies that are similar to the described scope of services. List no more than five (5) recent projects or studies that have been completed within the last five years. Include the following:

- a. Assignment name, location, client, firm who completed the work
- b. Names of project manager and lead technical professional who worked on the project(s)
- c. Brief description of the Firm's role and services performed
- d. Completion date of project and/or key deliverables
- e. Project Budget
- f. Client contact name, title/position, current phone number and email address

7. Project manager competence and qualifications (up to 15 points)

Provide information relevant to the Project Manager's experience in delivering similar projects or studies as described in the scope of services. Include the following to demonstrate project management experience and technical competency:

- a. Proposed role/responsibility for this Project
- b. Firm, current location and location during execution of the possible project(s) resulting from this RFQ.
- c. Educational background
- d. Years of experience related to the solicitation scope of services
- e. Applicable license and/or registration
- f. Availability and time commitments to the project over the next 12 to 24 months.
- g. Describe no more than three (3) recent projects or studies that have been completed within the last five years that are similar to work described in the solicitation. Include the following:
 - 1) Assignment name, location, client
 - 2) Brief description of project including approach, results, and unique similarities of prior work related to this project.
 - 3) Role on the project
 - 4) Completion date of project and/or key deliverables
 - 5) Project Budget
 - 6) Client contact name, title/position, current phone number and email address

8. Lead technical professional(s) competence and qualifications (up to 10 points)

The lead technical professional is responsible for delivery of technical work products and may be the same as the project manager, or separate individual(s). Include the following to demonstrate the experience and technical competency of each lead technical professional:

- a. Proposed role/responsibility for this Project
- b. Firm, current location and location during execution of the possible project(s) resulting from this RFQ.
- c. Educational background
- d. Years of experience related to the solicitation scope of services
- e. Applicable license and/or registration
- f. Availability and time commitments to the project over the next 12 to 24 months.
- g. Describe no more than three (3) recent projects or studies that have been completed within the last five years that are relevant and similar to the work described in the solicitation. Include the following:
 - 1) Assignment name, location, client
 - 2) Brief description of project including approach, results, and unique similarities of prior work related to this project.
 - 3) Role on the project
 - 4) Completion date of project and/or key deliverables
 - 5) Project Budget
 - 6) Client contact name, title/position, current phone number and email address

9. **Technical support staff competence and qualifications (up to 5 points)**
Provide the following information to clearly demonstrate the experience and capabilities of any additional project staff proposed for this Project:
- Proposed role/responsibility for this Project
 - Years of Experience
 - Firm, current location and location during execution of the possible project(s) resulting from this RFQ.
 - Educational background
 - Applicable license and/or registration
 - Years of experience related to the solicitation scope of services
 - Summary of relevant experience
10. **Demonstration of project understanding and approach (up to 35 points)**
Provide a thorough discussion on the respondent consulting team's understanding and approach for the project, including the proposed work plan for the project, approach to project management and approach to quality management. Provide relevant discussion on any potential challenges that the consulting team has identified with regard to the scope of work and proposed solutions.
11. **Project schedule and staff availability (up to 5 points)**
Provide a proposed schedule and the consulting team's approach to managing the schedule and meeting project deadlines.
12. **Other Information**
If desired, consulting teams can provide other information pertinent to the Project regarding respondent firm and support resources **within the 10-page limit.**
13. **Addenda**
Unless otherwise stated in the proposal, answers to all questions, inquiries, and requests for additional information will be issued in the form of Addenda. If Addenda are issued, receipt of each Addendum shall be acknowledged by the Respondent. **These pages are NOT included in the 10-page limit.**
14. **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. **This page is NOT included in the 10-page limit.**
15. **Interviews (optional; up to 5 points)**
The HGSD reserves the right to select directly from received SOQs and not perform interviews. In the event interviews are not performed, the interview point score will be added in full to each consulting team's point score.

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.

CONTRACT AND INSURANCE REQUIREMENTS

- A. **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 a SOQ. No exception shall be made.**
- B. **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.**

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT CONTRACT NO. _____

This Professional Services Agreement (the "Agreement") is made and entered into effective as of the ____ day of _____, 202____, 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

[NAME], [**CHOOSE**: "limited liability company" or "corporation"] organized under the laws of the State of [_____] ("CONSULTANT") with principal offices located at [ADDRESS].

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 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 into 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 may 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. However, 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 3, 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 sub-consultants, 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, sub-consultants, 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, sub-consultant, 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 that 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, sub-consultants, 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 [**CHOOSE: if the Consultant is a professional engineer use** “competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license” **else** “a person engaged in the business of providing the same services as CONSULTANT”] ; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of [**CHOOSE: if the Consultant is a professional engineer use** “a competent engineer” **or** “a competent person engaged in the business of providing the same services as CONSULTANT”] (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 sub-consultants, subcontractors, and suppliers, but may 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) any other applicable employment 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 (defined below) 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 does not have any 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 sub-consultants, subcontractors, 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 may not include pre-existing proprietary information of CONSULTANT, its sub-consultants, subcontractors, 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 register copyrights and trademarks in such Work Product and the right to file patent applications for patentable subject matter of such Work Product. 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). Should any Work Product be deemed by a court of competent jurisdiction not to be a "work made for hire" as defined in 17 U.S.C. Section 201(b), CONSULTANT agrees to assign to HGSD all Work Product not deemed to be a "work made for hire" and to use CONSULTANT's reasonable commercial efforts to assist HGSD to perfect its rights under such assignment. 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 (a) that has been incorporated into Work Product, (b) in connection with HGSD's exercise of its rights in the Work Product, (c) in connection with the operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of HGSD, or (d) 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 sub-consultants, 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 sub-consultants, 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 ("Confidential Information") shall be proprietary to HGSD (and no assignment of, license of, or grant of right to sublicense such Confidential Information shall have been deemed to occur), and considered and kept confidential and may 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 may 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 and not through the breach of any obligation by a third party to hold Confidential Information in confidence;
- (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 Chapter 552 of the Texas Government Code (the “Texas Public Information Act”) or in response to a court order to comply with the requirement of a government agency.

6.3 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 may not perform patent searches or evaluation of claims of issued patents 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.

6.4 CONSULTANT agrees to assist HGSD’s compliance with any required disclosure of information pertaining to this Agreement where such disclosure is required pursuant to the Texas Public Information Act. HGSD agrees that, upon CONSULTANT’s receipt of notice of any such request for such information, CONSULTANT may request a reasonable per-hour fee for the CONSULTANT’s time spent obtaining and delivering such information to HGSD. After CONSULTANT’s completion of the delivery of all requested information to HGSD, HGSD shall deliver the total fee owed to CONSULTANT under this Section 6.4 within thirty (30) days after receipt of CONSULTANT’s invoice documenting the time expended by CONSULTANT to comply with the request made by HGSD under this Section 6.4. This section survives the termination of this agreement.

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 may 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 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 sub-consultant, 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 MAY 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 (2) years after the completion of any Services, provide and require all sub-consultants 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 sub-consultant 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 sub-consultants and subcontractors. The terms "sub-consultant" and "subcontractor" for the purposes of Article 11 shall include sub-consultants 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 that 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, 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 the 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 \$5,000,000 Aggregate Bodily Injury and Property Damage |

* 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 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 INDEMNITEES 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 INDEMNITEES.

(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 sub-consultants 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 sub-consulting 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 may 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 may 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 may 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 at any time by 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 may 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 may 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 or recoup all damages and costs associated with finally completing such Services. If, for any reason, CONSULTANT is declared in default 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 (5) 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 such subcontractor, subconsultant or supplier will perform. HGSD shall have the right, within twenty-one (21) calendar days of such written notice, to refuse CONSULTANT’s employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by CONSULTANT as a result of such refusal 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, subcontractor or supplier 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.

ARTICLE 18 – GOVERNING LAW AND VENUE

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. **Venue shall lie in Harris County or Galveston County, Texas.**

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 and 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 Procedures. 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, 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 **Harris 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 **Friendswood, Texas**.

19.2 Any dispute, controversy, or claim arising out of or relating to this Agreement or any Work Order or any Services that is not resolved pursuant to Article 19.1 shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules 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. Unless otherwise agreed by the parties, the arbitration shall take place in Harris County, Texas, before a single arbitrator. No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation.

ARTICLE 20 – CONFIDENTIALITY OF AGREEMENT

20.1 Neither CONSULTANT nor any of its sub-consultants may 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 may not apply to mandatory reports that CONSULTANT or its sub-consultants, subcontractors, or suppliers are required by law to file with governmental authorities.

[Signature Page Follows]

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

CONSULTANT:

By: _____

Print Name:

Title:

Date

ATTEST:

HGSD:

Harris-Galveston Subsidence District

By: _____

Michael J. Turco

General Manager

Date

ATTEST:

ATTACHMENT A

Compensation terms for cost-reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For CONSULTANT's professional and non-professional staff, HGSD will compensate CONSULTANT on the basis of a multiplier added to the Raw Compensation 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, HGSD's compensation packages to consultants or contractors classifies professional employees as salaried exempt employees. Typically, HGSD's compensation packages to consultants or contractors classifies non-professional employees as hourly non-exempt employees. The Raw Compensation Cost for CONSULTANT's salaried exempt employees is defined as the employee's annual base salary excluding bonuses, burdens, and benefits divided by 2,080. For CONSULTANT's hourly non-exempt personnel, the Raw Compensation 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 forty (40) per week will be added to the base hourly wage and will be considered a part of the Raw Compensation Cost.

(a) RAW COMPENSATION MULTIPLIERS

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

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b) EXPENSES

"Billable Expenses" include all costs and expenses directly attributable to the 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 the actual invoice cost plus ten percent (10%). "Billable Expenses" include sub-consultants, travel expenses to and from locations outside Harris County, and copies of all deliverables submitted to HGSD. All local vehicle use outside Harris County 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.

EXHIBIT A

VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

By signing below, _____ (Firm) hereby
verifies the following:

1. Firm does not boycott Israel; and
2. Firm will not boycott Israel during the term of this Project

SIGNED BY: _____

Print Name & Title: _____

Company Name: _____

Date Signed: _____

NOTARIZATION

THE STATE OF _____)

)

COUNTY OF _____)

BEFORE ME, the undersigned notary public on this day personally appeared _____
_____, on behalf of _____ (Firm),
who being duly sworn, stated under oath that he/she has read the foregoing verification required
by Texas Government Code Section 2270.002 and said statements contained therein are true and
correct.

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20__.

NOTARY PUBLIC IN AND
FOR THE STATE OF _____

(SEAL)

ATTACHMENT B
WORK ORDER PSA 202X-XXX

This Work Order is issued subject to, is governed by and incorporates by reference that certain Professional Services Agreement, Contract No. PSA 202X-XXX, between the HGSD and CONSULTANT effective _____.

Work Order Date: _____

CONSULTANT: _____

Type of Compensation: _____

Compensation: _____

Location of Services: (County) _____

Description of Services: _____

Deliverables: _____

Schedule Requirements:

Commence Services: MM-DD-YYYY

Completion of Services: MM-DD-YYYY

Submittal Dates for Each Deliverable: _____

Agreed to by:

HGSD

By: _____

Name: Michael J. Turco

Title: General Manager

and

CONSULTANT NAME HERE

By: _____

Name: _____

Title: _____