

**AGREEMENT FOR CONSULTING SERVICES**

**THE STATE OF TEXAS**                    §  
   §                    **KNOW ALL MEN BY THESE PRESENTS**  
**COUNTY OF HARRIS**                    §

THIS AGREEMENT, (“Agreement”) is made by and between the **CITY OF SEABROOK, TEXAS**, hereinafter referred to as the “City,” and **CLARK CONDON ASSOCIATES, INC**, 10401 Stella Link Road, Houston , Texas 77025, hereinafter referred to as “Consultant”.

In consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**I. SERVICES**

Consultant has submitted its reponse/proposal of March 10, 2022 (“Proposal”) for the City **SH 146 Beautification – Green Ribbon Project**, as referenced in City RFQ Project #2022-07, (“Project”). Consultant agrees to perform design services and prepare design documents for the Project. Consultant’s services shall be performed in the amounts and at the times indicated in **Exhibit “A”**, attached hereto and incorporated by reference consistent with Consultant’s Proposal. Notwithstanding anything to the contrary in Consultant’s Proposal(s), or prior understandings, it is the intent of the parties that the terms of this Agreement shall control.

**II. PAYMENT**

City agrees to pay Consultant a total fee/costs not to exceed \$191,800.00. Consultant shall not exceed the above cost or fees for any phase of the Work, including reimbursable costs, without prior written authorization from the City. Consultant will, on a monthly basis and/or upon the completion of the Services, submit invoice(s) for the un-billed portion of Services actually completed. City agrees to pay the invoiced amounts within thirty (30) days from the date of the invoice, unless disputed in writing.

**III. TERM**

This Agreement shall begin on date of execution of this agreement, and shall terminate six (6) months after execution. Upon termination, City shall pay Consultant, at the rate set out in **Exhibit “A”**, attached hereto, for Services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City shall not be required to pay or reimburse Consultant for any services performed or for expenses incurred by Consultant after the date of the termination notice that could have been avoided or mitigated by Consultant. Time is of the essence of this Agreement. The Consultant shall be prepared to provide the professional services for the Project in the most expedient and efficient manner possible and with adequate resources and work force in order to complete the work by the times specified.

**IV. PERFORMANCE/QUALIFICATIONS/ CONFLICT OF INTEREST**

Consultant agrees and represents that it has the personnel, experience, and knowledge necessary to qualify Consultant for the particular duties to be performed for this Project under this Agreement. The Consultant will perform its services for the Project with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. Consultant shall at all times provide sufficient personnel to accomplish Consultant services in a timely manner.

Consultant shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Consultant's obligations under this Agreement.

Consultant warrants, represents, and agrees that Consultant presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Consultant's performance of the services hereunder.

## V. MISCELLANEOUS

**5.1 Consultant as independent Consultant.** In the performance of the professional services required by this Agreement, Consultant is and shall be deemed to be an "independent Consultant," not an agent, servant, or employee of City. Likewise, employees and agents of Consultant are not the agents, servants, or employees of City. It is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between Consultant and City.

**5.2 Termination of Agreement.** Either party may terminate this Agreement upon ten (10) days written notice to the other. In the event of termination not the fault of the Consultant, the Consultant shall be entitled to compensation for all services satisfactorily performed to the termination date.

This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period. If a termination for cause under this section is later determined to be improper, the termination shall automatically convert to a termination for convenience and Project Consultants recovery for termination shall be strictly limited to the compensation allowable under a termination for convenience.

**5.3 Applicable Law and Venue.** This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

**5.4 No Personal Liability of City; No Waiver of Immunity.** Nothing in the Agreement shall be construed as creating any personal liability on the part of any officer, director, employee, or agent of the City, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the City. The Parties agree that no provision of this Agreement extends the City's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the City of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.

**5.5 No Binding Arbitration; Right to Jury Trial.** The City does not agree to binding arbitration, nor does the City waive its right to a jury trial.

**5.6 Intellectual Property:** The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective design document, including the drawings and specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. The Consultant grants to the City a nonexclusive license to use the Consultant's design documents for

purposes of constructing, using, maintaining, altering and adding to the Project, provided that the City substantially performs its obligation under this Agreement. The City shall be permitted to retain copies, including reproducible copies, of the design documents for information and reference in connection with the City's use of the Project. In addition, City shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the design documents and the ideas and designs contained in them for any purpose, with or without participation of the Architect. Any unauthorized use of the design documents shall be at the City's sole risk and without liability to the Consultant and the Consultant's subconsultants.

**5.7 Confidentiality:** All information owned, possessed or used by City which is communicated to, learned, developed or otherwise acquired by Consultant in the performance of services for City, which is not generally known to the public, shall be confidential and Consultant shall not disclose any such confidential information, unless required by law. Consultant shall not announce or advertise its engagement by City in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner. Consultant agrees to treat as confidential the information or knowledge that becomes known to Consultant during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Consultant shall promptly notify City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to City all confidential information in Consultant's possession or control. Consultant shall further comply with all City information security policies that may apply and shall not make any press releases, public statements or advertisement referring to the Services provided under this agreement or the engagement of Consultant without the prior written approval of City.

**5.8 Insurance:** For the entire term of the Agreement ("Term"), Consultant shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence, \$2,000,000 in the aggregate or medical malpractice insurance (whichever applies). Consultant shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$2,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name CITY as Additional Insured. Consultant shall pay all insurance deductibles and deductibles must not exceed \$25,000 unless approved in advance by City. Consultant shall provide City Insurance Policy Endorsements and any additional coverage evidence requested by CITY evidencing these insurance requirements prior to the start of work. The Consultant shall notify the CITY in the event of any change in the required coverage or cancellation, and shall give such notices not less than 30 days prior to the change or cancellation. The Consultant shall provide replacement evidence of coverage, as determined adequate by City commensurate with the requirements of this Agreement, prior to such change or cancellation. The Consultant agrees to waive all the Consultants, its officers, employees, agents, assigns, and successors' rights of subrogation, except as provided by law, against the CITY, its officers, employees, and elected representatives for injuries, including death, property damage, or other loss covered by insurance and the Consultant will provide a waiver of subrogation endorsement against the CITY. The CITY must be named or listed on the endorsement. **COVERAGES SHALL BE WITH A COMPANY (WITH AT LEAST AN A- BEST RATING) ACCEPTABLE TO THE CITY PURCHASING AND RISK MANAGEMENT DIVISION AND A COPY OF THE CERTIFICATE OF COVERAGE SHALL BE**

**DELIVERED TO THE CITY ON OR BEFORE THE DATE OF THIS AGREEMENT.**

- 5.9 Indemnification:** To the fullest extent permitted by law, Consultant shall indemnify City, its officers, directors, agents and employees from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of Consultant or Consultant's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement.
- 5.10 No Indemnification by City.** Notwithstanding anything herein to the contrary, including any documents or exhibits that may be attached or incorporated by reference, it is specifically stipulated, agreed and acknowledged by Consultant/subconsultants/assigns, that under no circumstances shall the City be required, obligated, interpreted or determined to hold and save Consultant harmless, or provide indemnification to any party/3<sup>rd</sup> party as a result of this Agreement, it being specifically understood that the City has not created a sinking fund for any such purposes, as required by Texas Constitution Article 11, Section 7. Consultant acknowledges that City takes the position that such indemnification is not permitted by state law.
- 5.11 Limitation of Appropriation** Prior to the execution of this Agreement, Consultant has been advised by the City, and Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available as a condition for payment, only those sums as expressly provided for under this Agreement for this fiscal year to discharge any and all liabilities which may be incurred by City. The total compensation that Consultant may become entitled to hereunder and the total sum that the City shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.
- 5.12 Entire Agreement:** This agreement constitutes the entire agreement between City and Consultant, and all negotiations and all understandings between the Parties are merged herein. The terms and conditions of this Agreement specifically replace and supersede any prior discussions, terms, documents, correspondence, conversations, or other written or oral understanding not contained herein or specifically adopted by reference. Notwithstanding any provisions in Consultant's proposal or related attachments to the contrary, this Agreement shall be controlling.
- 5.13 Partial Invalidity.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 5.14 Survival.** Any provisions which by their terms survive the termination of this Agreement shall bind its legal representatives, heirs, and assigns as set forth herein.
- 5.15 Assignment.** Consultant shall not assign, transfer, or encumber any right or interest in this Agreement, in whole or in part, without prior written approval of City.
- 5.16 Notices:** Each formal notice required by the terms of this Agreement shall be in writing and sent by facsimile, telex, courier or by registered or certified mail.

- 5.17 Benefits:** This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns.
- 5.18 Amendments:** This Agreement can be supplemented and/or amended only by a dated written document executed by both parties.
- 5.19 Gender:** Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
- 5.20 Multiple Copies:** This Agreement may be executed in multiple counterparts each of which constitutes an original.
- 5.21 Article and Section Headings:** The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
- 5.22 Misspelled Words:** Misspelling of one or more words in this Agreement shall not void this Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the parties.

**[EXECUTION PAGE FOLLOWS]**

Executed to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF SEABROOK, TEXAS**

BY: \_\_\_\_\_  
Gayle Cook, City Manager

**CLARK CONDON**

By: Elizabeth Gilbert  
Elizabeth Gilbert, Managing Principal