

PROFESSIONAL SERVICES AGREEMENT

Inspection and Design of Water Tanks, Steel Structures, and Elevated Steel Utilities

This AGREEMENT ("Agreement") is entered into by and between the undersigned, Dunham Engineering("Contractor"), located at 6102 Imperial Loop, College Station, Texas 77845, and the City of Seabrook ("CITY"), Texas, a home-rule municipal corporation of the State of Texas, located at 1700 First Street, Seabrook, Texas, 77586.

Section 1. Services:

City may from time to time request Contractor to perform Inspection and Design Services of Water Tanks, Steel Structures and Elevated Steel Utilities (work) by issuing a written Task Order which shall set forth a Scope of Work including:

- The location of the Work Site
- The Work Required to be performed, including any drawings, plans, and/or specifications applicable to such Work;
- The time limits within which such Work must be completed to City's satisfaction;
- Any other requirements applicable to such work not inconsistent with other terms and conditions of this agreement.

Contractor shall review the Task Order and prepare a cost estimate and estimated schedule to complete the Scope of Work and return it to City for authorization.

Contractor shall bill for services as defined on a specific Task Order.

Section 2. Term and Termination: This Agreement shall begin on _____, for a term of five (5) years with up to an additional five (5) years if agreed upon by both parties in writing. This Agreement may be terminated, upon thirty (30) days written notice, by the CITY without cause or by the Contractor for cause. This Agreement may be terminated immediately by the CITY for cause, as determined by CITY. Upon termination, CITY shall pay Contractor for Services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, CITY will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

Section 3. Compensation: Contractor shall be paid for the services and reimbursable travel expenses, as defined in specific Task Orders. CITY shall pay Contractor in accordance with the Texas Government Code, Chapter 2251 which shall control payment requirements between the parties, as provided by statute. Contractor must submit invoices for all Services, which invoices must include dates and hours of service and details of services provided. Invoices shall be submitted, to the City Project Manager or designee. Payment for delivery of Services rendered shall not be unreasonably withheld or delayed. The CITY shall be under no obligation to pay for Services rendered without prior authorization. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to CITY.

Section 4. Travel: Contractor **shall not** be reimbursed for travel conducted in the pursuit of this Agreement except mileage from the Contractor's personal automobile.

Section 5. Limit of Appropriation and Fiscal Funding. The Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the CITY shall have available the amount budgeted by the CITY to discharge any and all liabilities which may be incurred by the CITY pursuant to this Agreement and that the total maximum compensation that the Contractor may become entitled to hereunder and the total maximum sum that the CITY shall become liable to pay to the Contractor hereunder shall

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not under any conditions, circumstances, or interpretations, hereof, exceed the said total maximum sum provided for in this section without prior written permission and approval by an authorized official from the CITY, as provided herein. The CITY'S fiscal year is October 1 through September 30. If this Agreement extends beyond September 30th, there shall be a fiscal funding determination. If, for any reason, funds are not appropriated to continue the contract in the new fiscal year, this Agreement shall become null and void on the last day of the current appropriation of funds without penalty of any kind or form to the CITY.

Section 6. Relationship of the Parties: Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of CITY. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of Seabrook employees. Contractor shall be responsible for all expenses necessary to carry out the services under this agreement, and shall not be reimbursed by CITY for such expenses except as otherwise provided in this Agreement.

Section 7. Authority of City Project Manager: All Services to be performed by the Contractor hereunder shall be performed to the satisfaction of the CITY'S project manager, namely City Manager or designee. The CITY'S project manager shall decide any and all questions, which may arise as to the quality or acceptability of the Services performed by the Contractor and the decisions of the CITY'S project manager in such cases shall be final and binding on both parties. However, nothing contained herein shall be construed to authorize the CITY'S project manager to alter, vary or amend this Agreement.

Section 8. Intellectual Property: This Agreement shall be an agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work for hire under federal copyright law. Ownership of the work shall belong to and remain the exclusive property of CITY. The work may be edited at any time within the CITY's discretion. If the work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to CITY, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the work, CITY maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the work in any form of medium, expression or technology now known or hereafter developed, at any time within the City's discretion. Contractor shall not sell, disclose or obtain any other compensation for the Services provided herein. If the work is one to which the provisions of 17 U.S.C. § 106A apply, the Contractor hereby waives and appoints CITY to assert on the Contractor's behalf, but without obligation on the CITY to do so, the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for CITY purposes.

Section 9. Confidentiality: During the term of this Agreement, Contractor may come in contact with confidential information of CITY. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor 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. Contractor 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 Contractor's possession or control. Contractor

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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 Contractor without the prior written approval of CITY.

Section 10. Warranties and Representations: Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by CITY, Contractor warrants and agrees that Contractor will perform the Services in compliance with all CITY rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

Section 11. Licenses/Certifications: Contractor agrees to obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, required for the performance of the Services.

Section 12. Performance/Qualifications and Assignment: Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards. The CITY and the Contractor bind themselves and their successors, executors, administrators, and assigns to this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement. Neither the CITY nor the Contractor shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

Section 13. Conflict of Interest: Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and CITY that could be construed as a conflict of interest with regard to this Agreement. Pursuant to Section 2252.908, Texas Government Code, if this Agreement requires an action or vote by the CITY Council or has a value of at least \$1 million, Contractor further warrants that Contractor has submitted a disclosure of interested parties to the CITY.

Section 14. Insurance: For the entire term of the Agreement ("Term"), Contractor shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence, \$3,000,000 in the aggregate or medical malpractice insurance (whichever applies). Contractor 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 \$1,000,000 per occurrence and \$3,000,000 in the aggregate; 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. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Contractor 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 Contractor shall notify the CITY in the event of any change in the required coverage or

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cancellation, and shall give such notices not less than 30 days prior to the change or cancellation. The Contractor 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 Contractor agrees to waive all the Contractors, 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 Contractor 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.**

Section 15. Indemnification: Contractor, to the fullest extent provided by law, shall indemnify and hold harmless City, and each of its directors, officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages and liabilities, including without limitation attorneys' fees and reasonable litigation costs, arising out of, connected with, or resulting from any negligent acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of this contract. If any action or proceeding shall be brought by or against the CITY in connection with any such claim, action, suit, demand, proceeding, cost, damage, or liability, the CONTRACTOR, on notice from the CITY, shall defend the CITY against such action or proceedings at Contractor's expense, by or through attorneys reasonably satisfactory to the CITY. The Contractor's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by the Contractor under this Agreement.

Section 16. Force Majeure: Neither CITY nor Contractor will be liable for any failure, breach, loss, damage or delay in the performance of this Agreement due to any cause beyond its reasonable control, including, an act of war, an act of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of CONTRACTOR), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

Section 17. Notices: Any notice given under this contract by either party to the other may be given by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

Section 18. Texas Family Code Child Support Certification: Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Section 19. Jurisdiction: CITY and Contractor agree that any dispute under this Agreement shall be brought in a court of competent jurisdiction in Harris County, Texas, and that this Agreement shall be governed by Texas law, except for the conflict of law provisions. Venue shall be exclusive in Harris County, Texas.

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Section 20. Prohibition on Boycotting Israel. Pursuant to Section 2270.002, Texas Government Code, CITY may not enter into a contract for goods or services unless the contract contains a written verification that the contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

Section 21. 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 Contractor/subcontractors/assigns, that under no circumstances shall the City be required, obligated, interpreted or determined to hold and save Contractor harmless, or provide indemnification to any party/3rd 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. Contractor acknowledges that City takes the position that such indemnification is not permitted by state law.

Section 22. Entire Agreement: This Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, and understanding, oral or written between the parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the parties executed subsequent to this agreement.

Section 23. Severability: In the event that any provision(s) of this Agreement shall for any reason be held invalid, illegal, or unenforceable, the invalidity, illegality or unenforceability of that provision(s) shall not affect any other provision(s) of this Agreement, and it shall further be construed as if the invalid, illegal, or unenforceable provision(s) had never been a part of this Agreement.

Section 24. Authority: Contractor warrants and represents that Contractor has full power and authority to enter into and perform this agreement and to make the grant of rights contained herein. The person signing on behalf of CITY represents that he/she has authority to sign this agreement on behalf of CITY.

Dunham Engineering

City of Seabrook

By:  _____
Name: Jim Dunham

By: _____
Name: Thomas G Kolupski

Title: Vice-Pres./Senior Engineer

Title: Mayor

Date: 11/26/2019

Date: _____

Note: Modification of this Form requires approval by the Office of the City Attorney.

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