

REQUEST FOR QUALIFICATIONS

Solicitation 2025-01

**ARCHITECTURAL & ENGINEERING DESIGN SERVICES
LOCKHART AQUATICS FACILITY**

RESPONSES DUE MARCH 11, 2025



City of Lockhart

RFQ 2025-01
RFQ FOR ARCHITECTURAL & ENGINEERING DESIGN SERVICES
LOCKHART AQUATICS FACILITY

RFQ Number **2025-01**
Title **RFQ FOR ARCHITECTURAL & ENGINEERING DESIGN SERVICES - LOCKHART AQUATICS FACILITY**

Start Date **Feb 11, 2025, 2:00:00 PM CDT**

Pre-Submittal Meeting **Feb 20, 2025, 2:00:00 PM CDT**

Question & Answer
End Date **Mar 3, 2025, 2:00:00 PM CDT**

Submittal Deadline **Mar 11, 2025, 2:00:00 PM CDT**

Contact **Travis Hughes
Director of Parks
& Recreation
512-398-6452
thughes@lockhart-tx.org**

Contract Duration **N/A**
Contract Renewal **N/A**
Comments **Pre-Submittal Meeting:**

Time: Feb 20, 2025, 02:00 PM Central Time (US and Canada)

Join Zoom Meeting:

<https://us05web.zoom.us/j/81109863118?pwd=pXqzmQR55RA0snyQwT738HbD0CO3SY.1>

Meeting ID: 811 0986 3118
Passcode: Y0agxE

Item Response Form

Item **2025-01 - RFQ FOR ARCHITECTURAL & ENGINEERING DESIGN SERVICES - LOCKHART AQUATICS FACILITY**
Quantity **1 each**
Prices are not requested for this item.
Delivery Location **City of Lockhart
308 W San Antonio St.
Lockhart, TX 78644**

CITY OF LOCKHART RFQ NO. 2025-01

**REQUEST FOR QUALIFICATIONS (RFQ) FOR ARCHITECTURAL &
ENGINEERING DESIGN SERVICES - LOCKHART AQUATICS FACILITY**

RFQ Issued: February 11, 2025

Submittal Deadline: March 11, 2025, prior to 2:00 PM

Requested by:

Lockhart Parks and Recreation Department

308 W San Antonio St.

Lockhart, TX 78644

(512) 398-6452

ADVERTISEMENT

NOTICE TO SUBMITTERS

RFQ No. 2025-01

REQUEST FOR QUALIFICATIONS (RFQ) FOR ARCHITECTURAL & ENGINEERING DESIGN SERVICES -
LOCKHART AQUATICS FACILITY

The City of Lockhart, Texas is accepting qualifications for highly qualified, capable, and experienced external professional service firms (“Firms” or “Firm”) to provide design, planning, engineering, and construction services for an Aquatics Facility. Please see the City of Lockhart website for the complete RFQ packet. Sealed qualification packages shall be externally marked to indicate “*RFQ 2025-01 - Lockhart Aquatics Facility*” and addressed to the City Secretary and received at City Hall Building at 308 W. San Antonio Street, Lockhart, TX, prior to 2:00 pm on Tuesday, March 11, 2025. **A pre-submittal meeting will be held on Thursday, February 20, 2025, at 2:00 pm via Zoom.** Questions related to this RFQ may be submitted no later than Thursday, February 27, 2025, at 2:00 p.m.

REQUEST FOR QUALIFICATIONS

I. INTRODUCTION

The City of Lockhart is soliciting a firm for the design and construction of a Parks & Recreation Aquatics Facility through a quality-based selection process. The desired services may include Aquatics Facility concepts, designs/plans, engineering, architectural, project management, and other relevant services. The following sections describe the required professional services as well as instructions for preparing and submitting a statement of qualifications.

To help expedite contract negotiations, a copy of our current professional services agreement is attached for your review. Please make sure your firm is familiar with our contract requirements, including but not limited to insurance, indemnification, and work product ownership. Thank you again for your interest in this important project.

II. BACKGROUND

Lockhart is located approximately 30 miles from Austin and 20 miles from the I-35 corridor and has a population of 14,681 according to the 2020 census. The current parks and recreation system includes 10 parks of various sizes, 1 soccer complex, 1 little league baseball complex, 1 (mature) public pool facility, two splash pads, and the beginnings of a city-wide trail system with 1.5 miles of hard surface trails and 35 miles of sidewalks.

The City seeks design and project management services for the construction of an Aquatics Facility.

Relevant Documents:

- Lockhart Parks, Recreation and Open Space Master Plan 5-Year Update (Halff 2024)
https://drive.google.com/file/d/1orz3pdaco--matRml31ysvM574_96-Rj/view?usp=sharing
- Lockhart Aquatics Facility City Council Presentation (WTI 2023)
<https://drive.google.com/file/d/1RNTdiGBX5JOTFxSPFUn2dngmne0SfbW/view?usp=sharing>
- Lockhart Aquatics Facility Market Analysis (Ballard*King 2023)
[Lockhart TX Market Analysis Final 09.17.23 - Google Docs](#)
- Lockhart Aquatics Facility Operational Plan (Ballard*King 2023)
[LockhartOperations10.25..23 - Google Docs](#)
- TP&W Grant Narrative (LPARD 2024)
[Project Narrative-Grant Application - Google Docs](#)
- Lockhart Aquatics Facility Site Concept (Halff 2024)
https://drive.google.com/file/d/16RGBWzjb3PwevdKYCdwva3IFq_xxaGJi/view?usp=sharing

III. PROJECT GOAL

The desired outcome is to construct an Aquatics Facility that will serve the recreational and competitive needs of Lockhart citizens for the next 40+ years. A significant amount of work has already been conducted in preparation for the construction of this facility. This includes site selection, design charrettes, facility concepts, facility programming/operating proposals, market analysis, budgeting projections for construction/operation, and the award of a Texas Parks and Wildlife (TPW) *Small Community, Non-Urban, Outdoor Grant*.

The facility will consist of three separate swimming pools: one leisure/recreational, one competitive, and one dedicated learn-to-swim teaching area. The facility will be constructed in two consecutive phases to allow for the application to a second TPW grant. The selected firm will work with Parks & Recreation Department leadership in a cooperative manner to design and build an Aquatics Facility with all necessary support amenities such as parking, lighting, landscaping, bathhouse, and office/storage (as indicated in the linked site concept).

IV. PROPOSED PROJECT SCOPE COMPONENTS

- Review and Evaluate Project Work To-Date:
 1. Review current and future aquatics needs of the Lockhart community
 2. Review existing concepts/plans and provide feedback
 3. Review market analysis and operational plan and provide feedback
 4. Determine if current aquatics facility designs are aligned with community needs
 5. Review TPW grant requirements/guidelines/timelines
- Develop Final Aquatics Facility and Amenity Designs/Plans and Construction Documents:
 1. Ensure Aquatics Facility design supports the desired programming needs
 2. Determine and include all required facility support amenities and all desired pool amenity features with approval of staff
 3. Determine an appropriate phasing of the facility construction to allow for a second TPW grant award
 4. Assist staff with second TPW grant application by providing guidance and required grant support documents
 5. Ensure the Aquatics Facility design is functional and aesthetically pleasing
 6. Ensure the Aquatics Facility design meets ADA and State safety standards
 7. Ensure the Aquatics Facility design will allow for year-round utilization
 8. Ensure the Aquatics Facility layout will be designed to be compatible with a future adjacent Recreation Center
 9. Provide staff and City Council presentations as required for cooperative input and design approval.
- Manage Aquatics Facility Construction:
 1. Assist City Staff with the selection of an Aquatics Facility construction firm
 2. Provide a construction timeline to be approved by staff
 3. Provide regular progress reports/meetings on a schedule to be approved by staff
 4. Provide contingency plans due to unforeseen delays to construction
 5. Provide an appropriate close-out procedure for Phase 1 and Phase 2 in collaboration with staff

V. CONSULTANT STATEMENT OF QUALIFICATIONS PREPARATION AND SUBMITTAL INSTRUCTIONS

Consultants wishing to be considered for the referenced project are required to prepare and submit their Statement of Qualifications (SOQ) as follows:

- The SOQ pages shall be no larger than letter-size (8 ½" by 11") or, if folded to that dimension, twice letter size (11" by 17") with each **Criteria Section** (defined below) addressed within the SOQ. Elaborate covers, binding, dividers, etc. are not required.
- Limit the number of pages of the SOQ to 8 single-sided 8 ½" by 11" pages (11" x 17" sheet counts as 2 pages) or 4 double-sided pages. A cover letter and tabs, if provided, are not included in the page count.
- The SOQ shall not use a font size smaller than 10 pt. Arial font.
- The SOQ shall also document the consultant can provide the necessary insurance and has no objections to the City's standard form of agreement for professional services.
- Submit the completed SOQ in paper and electronic form (described below) by the date and time specified below.

Please submit five (5) hard copies and one (1) USB drive containing only the same SOQ document that is submitted in hard copy. Note that the City will not review or consider any information provided that is not specifically requested below.

Deliver the 5 hard copies and USB drive together in a sealed envelope, externally marked to indicate 'RFQ 2025-01- Lockhart Aquatics Facility' and addressed to the City Secretary located in the City Hall Building at 308 W. San Antonio Street, Lockhart, Texas 78644, **prior to 2:00 p.m. on Tuesday, March 11, 2025**. All submittals must be labeled on the cover sheet with Firm's name and 'Request for Qualifications for Architectural & Engineering Design Services – Lockhart Aquatics Facility'. Late submittals will not be considered.

VI. SELECTION AND REVIEW PROCESS

The City desires to select a Firm for Architectural & Engineering Design Services for the new Lockhart Aquatics Facility. For this solicitation, a two-step selection process shall be used:

- Request Statements of Qualifications (SOQs) which will be evaluated to shortlist firms. Additional information or SOQ clarifications may also be requested of the top Consultants identified.
- Interview shortlisted firms and select the most qualified firm to submit a proposal for contract negotiations. It is anticipated that up to four firms will be shortlisted and selected for an interview.
- In the event the City and selected firm do not agree to contract terms, the City will contact the next highly qualified firm from the shortlisted firms to negotiate a contract.

The evaluation committee will review all responsive submittals and select the best evaluated statements of qualifications for further review. SOQs will be evaluated based on the criteria shown in the Evaluation Criteria section of this document. A staff-led Evaluation Panel will review each Firm's SOQ, and contact references. The City will interview shortlisted firms prior to making a recommendation but maintains the option to forego interviews if scoring shows a Firm is clearly the most qualified. Staff intends to use the following guidelines for the interview process:

- The number of firms interviewed will depend on the closeness of the scores following evaluation of the written SOQs.
- Only firms that are considered qualified to perform the work, on the basis of their written SOQ, will be invited for interviews.
- Staff will consider significant gaps in point separation between the top ranked firms in determining the number of firms to be interviewed.
- Staff may conduct interviews in other cases where staff believe it is in the best interest of the City.

VII. EVALUATION CRITERIA

Firms will be evaluated and given a weighted score according to the criteria below.

- 1) **Qualifications of Firm (30%)** - Qualifications of firm, specifically as they relate to similar projects that the Respondent is choosing to be considered for, i.e. aquatics facility design, aquatics facility project management, aquatics facility amenity selection and installation, strategic recommendations, and cost estimating.
- 2) **Team Experience and Project Success (30%)** - Project experience of similar size and scope by the firm(s) and the individuals who would be assigned to this Project. Pertinent professional experience of the project manager(s) and supporting staff that will be assigned to the proposed projects shall be included. The experience of any subconsultants should be listed along with their experience. Project references and current contact information for all references will be required.
- 3) **Available Resources to Complete Project (15%)** - This criterion would show that the firm has capacity to be able to facilitate additional projects. This criterion should also show that the firm has enough resources to complete the project within the desired project schedule, including a past history of on-time performance (provide references with up-to-date contact info. please).
- 4) **Project Approach (15%)** - The logical sequencing and organizational methods proposed to complete the aquatics facility project. Attention will be focused on a clear understanding of the City's specific situation and needs. Methods utilized to provide excellent quality control and quality assurance as well as methods utilized to minimize unforeseen conflicts are also considered.
- 5) **Technical Innovation (10%)** – The proposed project team should show an understanding of the regional context and national best practices. Creative and innovative approaches are encouraged to enhance public engagement and elevate outcomes. The Respondent shall show an understanding of the area's other rapidly growing cities with recent aquatics facility projects.

APPENDIX A

PROPOSED PROCUREMENT SCHEDULE

APPENDIX A**PROPOSED PROCUREMENT SCHEDULE****REQUEST FOR QUALIFICATIONS (RFQ) FOR ARCHITECTURAL &
ENGINEERING DESIGN SERVICES - LOCKHART AQUATICS FACILITY****RFQ NO. 2025-01**

Advertisement	February 11, 2025
Pre-Submittal Meeting (2:00 PM)	February 20, 2025
RFQ Related Questions Due (2:00 PM)	February 27, 2025
Answers to Questions via Written Addendum	March 3, 2025
Qualifications Due (prior to 2:00 PM)	March 11, 2025
Evaluation Committee Meets	March 14, 2025
Notice Issued for Short-Listed Interviews	March 18, 2025
Interviews	March 25-27, 2025
Final Selection	March 28, 2025

APPENDIX B

PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT for a SINGLE PROJECT

This Professional Services Agreement for a Single Project (“**Agreement**”) is made this ____ day of _____, 2025 (“**Effective Date**”) by and between City of Lockhart, P.O. Box 239, Lockhart, Texas 78644, (“**Client**”), and _____ (“____”). Sometimes herein Client and ____ are referred to individually as a “**Party**” and collectively as the “**Parties.**”

Whereas, Client desires to contract with ____ to provide professional services on a nonexclusive basis; and

Whereas, ____ is willing to provide professional services on a nonexclusive basis; and

Now Therefore, the Parties understand, acknowledge, and agree that this Agreement will establish the terms and conditions for certain Work specifically identified herein to be performed by ____.

CONSPICUOUS AND FAIR NOTICE

EACH PARTY REPRESENTS TO THE OTHER THAT (1) IT HAS CONSULTED AN ATTORNEY CONCERNING THIS AGREEMENT OR, IF IT HAS NOT CONSULTED AN ATTORNEY, IT WAS PROVIDED THE OPPORTUNITY AND HAD THE ABILITY TO DO SO, BUT MADE AN INFORMED DECISION NOT TO DO SO, AND (2) IT FULLY UNDERSTANDS ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.

ARTICLE 1. WORK, AGREEMENT DOCUMENTS AND PROJECT INFORMATION

- 1.1 Work. ____ will perform the consulting, engineering, and/or other professional services, as set forth in detail in Exhibit A (the “**Work**”).
- 1.2 Agreement Documents. ____ will perform the Work in accordance with the terms, provisions, conditions, and specifications set forth in the following documents, all of which are incorporated herein by this reference, and which together form the Agreement Documents:
- (a) This Agreement, any purchase order issued by Client incorporating this Agreement, any fully executed amendments, and/or Change Orders;
 - (b) Exhibit A – Project Information, Scope of Work, Contract Price, and Contract Time; and
- 1.3 Interpretation. In the event of any conflict or inconsistency between or among any of the Agreement Documents, the order of precedence is as stated above unless expressly stated otherwise herein. In the event of any conflict or inconsistency between or among the terms or conditions established in a Change Order or amendment and the Agreement, terms of such Change Order or amendment will take precedence over those of the Agreement.
- 1.4 Defined Terms. Some capitalized terms used in the Agreement are defined in Exhibit A. Any term defined in Exhibit A will have the same meaning throughout the Agreement, and any term defined in the Agreement will have the same meaning in any exhibit.

ARTICLE 2. COMPENSATION

- 2.1 Pricing. ____ will bill for its Work as per accepted quotes.
- 2.2 Invoicing. ____ will submit monthly invoices for Work rendered in the prior month.
- (a) Lump Sum. ____ will invoice on the basis of percentage of completion of Work.
 - (b) Disputed Invoices. If Client objects to all or any portion of an invoice, it must notify _____ in writing detailing the nature of the objection within seven (7) days from the date of receipt of the invoice, and must

pay any undisputed portion of the invoice as provided in Section 2.3 below. The Parties will confer immediately after Client advises of a dispute and the Parties will make every effort to immediately resolve the disputed portion of the invoice. If the Parties fail to reach agreement at the project level on a disputed invoice within thirty (30) days of the date of the invoice, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.

- 2.3 **Payment Terms.** Except as provided in Section 2.2(c) above, Client must pay all invoices via wire transfer no later than thirty (30) days after the date of the invoice.
- 2.4 **Failure to Pay.** Interest will accrue on all delinquent payments at the rate of 1.5% per month, or the highest rate permissible under applicable law, whichever is less, starting on the 31st day after the date of an invoice. Additionally, if Client does not pay ___ within forty-five (45) days of the date of an invoice, then, upon seven (7) days' written notice to Client, ___ may suspend performance of the Work and any Deliverables until it receives payment of the amount owing. Additionally, Client will reimburse ___ for all reasonable costs incurred by ___ in collecting any overdue payments and related interest, including, without limitation, reasonable attorneys' fees, other legal costs, court costs, and collection agency fees.
- 2.5 **Records/Audit.** ___ will keep complete and accurate records in accordance with generally accepted accounting practices with respect to all amounts invoiced by ___ under this Agreement. ___ will keep such records pertaining to each invoice for two (2) years after the date of the invoice. If an audit is commenced within such two (2) year period, Client must provide ___ with advance written notice of the audit, such audit may only be performed during normal business hours, and such audit shall not extend to ___'s overhead, markups, profit/loss information, fixed rates, unit prices, prices expressed as percentages, or any trade secrets.

ARTICLE 3. TIME FOR PERFORMANCE, DELAYS

- 3.1 **Time for Performance.** ___ will use commercially reasonable efforts to perform the Work within the Contract Time to the extent consistent with the terms of this Agreement, the Standard of Care defined below, and the orderly progress of the Work.
- 3.2 **Completion.** ___'s Work will be considered complete at the earlier of: (i) the date when ___'s Deliverables are reasonably accepted by Client; or (ii) thirty (30) days after the date when the last of ___'s Deliverables are submitted for final acceptance if Client does not notify ___ in writing within such 30-day period that the Deliverables fail to conform to the requirements of the Agreement.

ARTICLE 4. ADDITIONAL AND CHANGED WORK, DELAYS

- 4.1 **Work Added or Changed by Client.** No changes or additions shall be made to work descriptions or specifications of Client unless ordered and acknowledged in writing by a properly authorized representative of Client in writing ("**Change Order**"). Client shall provide ___ with an equitable adjustment in compensation and time for performance to the extent they are impacted by the additional or changed Work. ___ shall not commence any changed or additional Work until ___ has advised the Client that such requested Work is not covered by Attachment A, the parties have agreed in writing to the costs associated with ___'s performance of said additional or changed Work and ___ has received written approval from the Client to proceed with the additional or changed Work.
- 4.2 **Force Majeure Events.** No Party will be liable or responsible to the other Party, nor be deemed to have defaulted under this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), to the extent such failure or delay is caused by a Force Majeure Event. The term "**Force Majeure Event**" means any event which: (a) is not within the reasonable control of the affected Party; and (b) causes the affected Party to be delayed in performance of, or unable to perform, its obligations under this Agreement. Subject to the foregoing, Force Majeure Events include, but are not limited to: drought; fire; flood; extreme weather conditions; earthquake; lightning; epidemic; war (whether declared or undeclared); acts of terrorism, or damage resulting therefrom; acts of God or the public enemy; explosion; rebellion; riot; civil disturbance; sabotage; vandalism; actions of third parties; actions of a court or other governmental entity; actions of, or failure to act by, regulatory agencies; any change in law applicable to this Agreement; strikes or other

concerted acts of workers; accidents in shipping or transportation; and the closing or congestion (beyond reasonably foreseeable levels) in any harbor, dock, port, canal, or other adjunct of the shipping or navigation of or within any place. The Party affected by a Force Majeure Event: (i) must promptly notify the other Party by email; (ii) is relieved from fulfilling its contractual obligations during the continuance of the Force Majeure Event to the extent the inability to perform is caused by the Force Majeure Event; (iii) as soon as reasonably possible after the Force Majeure, must fulfill or resume fulfilling its obligations hereunder; (iv) must promptly notify the other Party by email of the cessation or partial cessation of the Force Majeure Event; and (v) will be entitled to equitable compensation and an equitable adjustment of the Contract Time to neutralize the effect of the Force Majeure Event. Within a reasonable time after cessation of the Force Majeure Event, any Party claiming additional time and/or compensation must provide the other Party with supporting information to substantiate its position. If the Parties fail to reach agreement at the project level on an amendment or a Change Order within thirty (30) days of the submission of supporting information, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.

- 4.3 Impacts to the Work. ___ will be entitled to equitable compensation for, and an equitable adjustment of the Contract Time to the extent impacted by, any additional or changed Work as a result of any actions or circumstances not the fault of ___ which impact the Work, including, but not limited to: a failure of Client to perform or cause performance of its obligations in accordance with the Agreement, including, but not limited to, failure to provide necessary access or Information; failure to provide necessary comments in connection with the development of any Deliverables; interference with or delay of any Work caused by Client, or other party for whom Client is responsible; any error, omission, or ambiguity in Information; changes in site conditions; and delays in obtaining, or the absence, suspension, termination, or failure of renewal of, any permit, license, or governmental authorization.
- 4.4 Change Order Requests. Whenever ___ discovers an event or a condition has impacted its Work so as to constitute a basis for a change in compensation or schedule, ___ will notify Client by email promptly after discovery of the event or condition, advising Client of the nature of the impact and requesting a Change Order. Within a reasonable time thereafter, ___ will provide Client supporting information to substantiate ___'s position. If the Parties fail to reach agreement at the project level on a Change Order request within thirty (30) days' of ___'s submission of supporting information, either Party has the option of proceeding in accordance with Article 15, Dispute Resolution.
- 4.5 Delays by ___. If the Work is not progressing in accordance with the project schedule due to ___'s fault, ___ will take appropriate corrective measures at ___'s expense, which may include working overtime or adding staff, to the extent the delays are caused by ___'s fault.

ARTICLE 5. CLIENT'S RESPONSIBILITIES

- 1.1 Client Information. Client will furnish to ___ all existing studies, reports, surveys, inspections, Project Site evaluations, data, and other information available or that becomes available to Client and pertinent to ___'s performance of the Work ("**Information**"), authorize ___ to obtain additional Information as required; and furnish the services of others where necessary for the performance of the Work. ___ will be entitled to use and rely on the completeness and accuracy of all such Information.
- 1.2 Access. Where necessary for performance of the Work, Client will arrange for ___ access to any site or property.
- 1.3 Subsurface Investigations. If the Work involves subsurface investigation, excavation, or drilling, Client must provide ___ with assistance in locating underground structures or utilities in the vicinity of any such activities. If despite commercially appropriate practices neither Client nor ___ can confirm the location, Client agrees that ___ is not responsible for any costs associated with, and accepts all liability and costs associated with, the repair, replacement, or restoration of any damage caused by the performance of the Work.
- 1.4 Communication. Client will designate an authorized representative to be responsible for communications and consultation with ___, and who will have the authority to make decisions necessary for ___ to perform its Work.

ARTICLE 6. ___'S OBLIGATIONS AND WARRANTY

- 6.1 Standard of Care. ___ will perform the Work consistent with the professional skill and care ordinarily provided by the same type of professional, for a project of similar size, scope, and complexity during the time which the Work is provided, and in a similar locality, under similar circumstances (“**Standard of Care**”).
- 6.2 Warranty for Materials. In the event ___ procures Materials pursuant to this Agreement, ___ warrants to Client that the Materials will be new and free of defects in workmanship (“**Warranty**”).
- 6.3 Remedies. If ___’s Work fails to meet the Standard of Care (“**Nonconforming Work**”), or if any Materials fail to meet the Warranty (“**Defective Materials**”), and if Client provides written notice to ___ of such failure no later than one (1) year after completion of the Work (“**Correction Period**”), at ___’s option ___ will within a reasonable time after receipt of written notice: (a) re-perform the Non-conforming Work; (b) repair or replace the Defective Materials; or (c) refund the amount of compensation paid to ___ for such Non-conforming Work and/or Defective Materials. In no event will ___ be required to bear the cost of gaining access in order to perform its obligations under this Section 6.3.
- 6.4 Warranty Limitation. THE STANDARD OF CARE IS NOT A WARRANTY OR GUARANTEE, AND ___ HAS NO SUCH OBLIGATION, EXPRESS OR IMPLIED, WITH RESPECT TO PROFESSIONAL SERVICES. NOTHING IN THIS AGREEMENT WILL BE INTERPRETED TO REQUIRE _____ TO PERFORM PROFESSIONAL SERVICES TO ANY HIGHER STANDARD OR HAVE ANY OBLIGATION IN THE PERFORMANCE OF PROFESSIONAL SERVICES IN EXCESS OF WHAT IS REQUIRED BY THE STANDARD OF CARE, AND THIS SECTION WILL CONTROL OVER ANY CONTRARY PROVISION. OTHER THAN THE EXPRESS WARRANTIES CONTAINED HEREIN, _____ DISCLAIMS ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. SUBJECT TO ___’S LIABILITY UNDER SECTION 9.2, CLIENT’S EXCLUSIVE REMEDIES AND ___’S ONLY OBLIGATIONS ARISING OUT OF A CLAIM FOR NONCONFORMING WORK OR DEFECTIVE MATERIALS FOLLOWING SUBSTANTIAL COMPLETION OF THE WORK WILL BE THOSE STATED IN THIS ARTICLE 6.
- 6.5 Licenses. ___ will obtain in ___’s name the known licenses, permits, or other approvals from any governmental agency or regulatory body that are necessary for ___ to perform the Work.
- 6.6 Resources. ___ will obtain all tools, equipment, materials, software, and licenses that are necessary for ___ to perform the Work.
- 6.7 Employees. ___ will employ, discharge, pay, control, and direct its employees. ___ will employ only skilled professionals for Work requiring special qualifications.
- 6.8 Inspections. If the Work includes inspections during or after construction based upon ___-prepared drawings or specifications, ___ will, consistent with the Standard of Care, inspect to determine in general if the construction work conforms to the requirements of the drawings or specifications, but the sole responsibility for compliance with drawings and specifications will be with the entity performing the construction.
- 6.9 Communication. ___ will designate an authorized representative to be responsible for communications and consultation with Client, and who will have the authority to make decisions necessary for ___ to perform its Work. ___ will advise Client at regular intervals of the status of the Work.

ARTICLE 7. CONFIDENTIALITY

- 7.1 Confidentiality Agreement. Except as otherwise required by the Texas Public Information Act, each Party agrees it will treat as confidential and not disclose Confidential Information to any third parties. The term “**Confidential Information**” includes: (i) all information, materials, or products developed pursuant to this Agreement; and (ii) information about a Party’s business affairs, employees, finances, services, intellectual property, trade secrets, and other sensitive, marketing or proprietary information, whether orally or in written, electronic, or other form or

media. The Party receiving Confidential Information is not permitted to reveal such Confidential Information to any third party without written consent from an authorized representative of the Party disclosing the Confidential Information.

- 7.2 Remedy. The Parties agree that the actual or threatened disclosure or use of any Confidential Information will cause irreparable harm to the disclosing Party, and that the disclosing Party will be entitled, without prejudice or limit to any other remedy, to obtain injunctive relief to prevent such unauthorized use or disclosure.
- 7.3 Communications with Third Parties. To the extent the Work requires ___ to communicate with any third party including, but not limited to, owners of the Project Site or other locations, former employees, current employees, or government authorities, ___ shall so inform Client. For all such communications, Client releases ___ from claims of breach of confidentiality, waiver of privilege, or otherwise associated with any such communications.

ARTICLE 8. INSURANCE

- 8.1 Required Insurance Coverage. ___ will obtain and maintain insurance of the types and amounts set forth herein. All insurance, except Worker’s Compensation/Employer’s Liability and Professional Liability Insurance, shall name the Client as an additional insured. The insurance will be in effect before Work commences and will remain in effect until completion of the Work. ___ will require any subcontractors to obtain and maintain coverages appropriate to their scope of work. ___ will have the following insurance coverage:
- (a) Worker’s Compensation Insurance and Employer’s Liability Insurance as required by the law of the state in which the Project is located, but Employer’s Liability coverage will be in the amount of \$1,000,000 each accident;
 - (c) Automobile Liability Insurance in the amount of \$1,000,000 combined single limit per accident;
 - (d) Commercial General Liability Insurance in the amount of \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products-completed operations aggregate; and,
 - (e) Professional Liability Insurance in the amount of \$1,000,000 each claim and \$2,000,000 annual aggregate.
- 8.2 Certificates of Insurance. Prior to commencing Work, ___ will furnish Client with certificate(s) of insurance evidencing compliance with the insurance requirements herein. Renewal certificates will be provided to Client upon the expiration of any required insurance policies. No policy will be cancelled or not renewed without thirty (30) days’ prior written notice to Client.

ARTICLE 9. INDEMNITY

- 9.1 Definitions.
- (a) “**___ Group**” means ___ and its subcontractors of all tiers, and each of their parent, subsidiary, and affiliated companies, and all of their officers, directors, and employees.
 - (b) “**Client Group**” means Client and its parent, subsidiary and affiliated companies, and all of their officers, directors, representatives and employees.
 - (c) “**Losses**” means any and all damages, costs, or expenses, including, but not limited to, reasonable attorneys’ fees, expert fees, and expenses and costs of litigation.
 - (d) “**Claims**” means all third-party claims, lawsuits, demands, or actions.

9.2 'S INDEMNITY OBLIGATIONS.

- (a) WILL INDEMNIFY AND HOLD HARMLESS CLIENT GROUP FROM ANY AND ALL LOSSES ARISING OUT OF CLAIMS TO THE EXTENT SUCH CLAIMS ARE CAUSED BY 'S NEGLIGENT ACTS, ERRORS, OR OMISSIONS IN THE PERFORMANCE OF ITS PROFESSIONAL SERVICES UNDER THIS AGREEMENT.
- (b) WITH THE EXCEPTION OF CLAIMS ARISING UNDER SECTION 9.2(a), WILL INDEMNIFY AND HOLD HARMLESS CLIENT GROUP FROM LOSSES, AND WILL DEFEND CLIENT GROUP FROM CLAIMS, DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE TO THE EXTENT SUCH BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF IN THE PERFORMANCE OF ITS WORK.

9.3 **CLIENT'S INDEMNITY OBLIGATIONS.** CLIENT WILL, TO THE EXTENT ALLOWED BY LAW, INDEMNIFY AND HOLD HARMLESS GROUP FROM LOSSES ARISING OUT OF CLAIMS DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE TO THE EXTENT SUCH BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CLIENT IN THE PERFORMANCE OF THIS AGREEMENT. ADDITIONALLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN THE EVENT PERFORMS INTRUSIVE GROUND EXPLORATIONS OR INVESTIGATIONS, INCLUDING BUT NOT LIMITED TO, EXCAVATION, DRILLING, BORING, OR PROBING ("SUBSURFACE INVESTIGATION") AS PART OF THE WORK, CLIENT WILL, TO THE EXTENT ALLOWED BY LAW, INDEMNIFY GROUP FROM AND AGAINST LOSSES RESULTING FROM, OR ARISING OUT OF, CLAIMS FOR DAMAGES TO SUBSURFACE OR UNDERGROUND UTILITIES OR STRUCTURES, INCLUDING BUT NOT LIMITED TO, GAS, TELEPHONE, ELECTRIC, WATER, OR SEWER UTILITIES, WHOSE LOCATIONS WERE NOT DESIGNATED OR IDENTIFIED TO PRIOR TO THE COMMENCEMENT OF ANY SUBSURFACE INVESTIGATION.

9.4 **RISK OF LOSS TO THE WORK.** ADDITIONALLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IT IS UNDERSTOOD AND AGREED THAT CLIENT BEARS ALL RISK OF LOSS OF OR DAMAGE TO THE WORK AND THE FACILITIES WHICH ARE THE SUBJECT OF THE WORK INCLUDING ALL MATERIALS AND EQUIPMENT TO BE INCORPORATED THEREIN, AND CLIENT HEREBY, TO THE EXTENT ALLOWED BY LAW, RELEASES AND SHALL DEFEND, INDEMNIFY, AND HOLD INDEMNITEES HARMLESS FROM ANY SUCH LOSS OR DAMAGE, HOWEVER SUCH LOSS OR DAMAGE SHALL OCCUR.

9.5 **CONDITIONS PRECEDENT.** EACH PARTY AGREES THAT AS A CONDITION PRECEDENT TO ITS OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS, THE INDEMNIFIED PARTY MUST GIVE PROMPT WRITTEN NOTICE TO THE INDEMNIFYING PARTY OF ANY CLAIM COVERED BY ARTICLES 9 OR 10, OR ANY OTHER INDEMNIFICATION CLAUSE IN THIS AGREEMENT.

WHERE LIABILITY IS ATTRIBUTABLE TO THE JOINT NEGLIGENCE OR FAULT OF AND CLIENT OR ANY CLIENT INDEMNITEE, 'S DUTY OF INDEMNIFICATION SHALL BE LIMITED TO 'S OR 'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS ALLOCABLE SHARE OF JOINT NEGLIGENCE OR FAULT. HOWEVER, NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, 'S INDEMNITY OBLIGATIONS ARE LIMITED TO THAT PROPORTIONATE PERCENTAGE OF FAULT OF THE CLAIMS OR DAMAGES THAT DIRECTLY ARISE FROM 'S ACTIONS OR INACTIONS, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF LAW OR FINAL RESOLUTION BY AN ARBITRATOR OR PANEL OF ARBITRATORS OR BY AGREEMENT BETWEEN THE PARTIES. 'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL NOT INCLUDE AN OBLIGATION FOR TO INDEMNIFY AND DEFEND CLIENT OR ANY CLIENT INDEMNITEE FOR CLIENT'S OR ANY CLIENT INDEMNITEE'S NEGLIGENT ACTS AND FAULT.

ARTICLE 10. HAZARDOUS SUBSTANCES AND POLLUTION

10.1 **Pre-existing Conditions.** Client and acknowledge that, prior to the start of this Agreement, has not generated, handled, stored, treated, transported, disposed of, or in any way taken responsibility for any toxic or hazardous substance, including any contaminated soils, wastes, or substances, as defined by law ("**Hazardous Substances**") at the Project Site. Any Hazardous Substances originating with or generated by Client, or any pre-existing Hazardous Substances which are in, on, under, or migrating from the Project Site, or any Hazardous Substances introduced to the Project Site by any party other than Group (collectively, "**Non- Hazardous**

Substances”), shall, as between ___ and Client, remain the sole and exclusive property of Client, it being the intention of the Parties that Client be solely responsible for such Non-___ Hazardous Substances and shall be regarded as the owner and generator of all such Non-___ Hazardous Substances for all purposes.

10.2 **Hazardous Substances Encountered During the Work; Disposition of Samples.** Client recognizes that, when it is known, assumed, or suspected that Hazardous Substances exist on or beneath the surface of the site of the Work, or within any structure thereon, certain sampling materials such as drill cuttings and drill fluids or asbestos removed for sampling, should be handled as if hazardous or contaminated. Accordingly, when ___ encounters Hazardous Substances during performance of the Work, such as when sampling is included in the scope of Work, and when determined by ___ in its sole and exclusive judgment to be necessary based on ___’s assessment of the degree of contamination, hazard, and risk, _____ will: promptly inform Client that containerization and labeling will be performed; will appropriately contain and label such materials; and will leave the containers on the Project Site for proper, lawful removal, transport, and disposal by Client. All samples of soil, groundwater, waste, rock, or other materials collected from the site will remain the property of Client and will be returned to Client by ___ within thirty (30) days after submission of ___’s report, unless applicable law requires the retention or other disposition of such samples. All costs associated with the disposition or returning of samples will be charged to Client. ___ will not sign any hazardous waste manifests or bills of lading, and all such manifests and generator numbers will be in the name of, and signed by, Client. Nothing contained in this Agreement will be construed or interpreted as requiring , its officers, agents, servants, or employees to assume the status of a generator, storer, treater, transporter, disposer of hazardous substances, arranger for disposal of hazardous substances, or disposal facility as those terms appear within the Resource Conservation Recovery Act, 42 USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the treatment, storage, transportation or disposal of waste.

10.3 **INDEMNITY FOR HAZARDOUS SUBSTANCES AND POLLUTION.** TO THE FULLEST EXTENT PERMITTED BY LAW, ___ SHALL ASSUME ALL RESPONSIBILITY FOR, INCLUDING CONTROL AND REMOVAL OF, AND SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS, ALL MEMBERS OF CLIENT GROUP FROM AND AGAINST ANY LOSSES ARISING OUT OF OR RELATING TO ANY HAZARDOUS SUBSTANCES BROUGHT TO OR RELEASED AT THE PROJECT SITE BY ___ Group.

10.4 **CLIENT INDEMNITY FOR HAZARDOUS SUBSTANCES AND POLLUTION.** TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD _____ GROUP HARMLESS FROM AND AGAINST ANY LOSSES ARISING OUT OF OR RELATING TO THE PRESENCE AT THE PROJECT SITE OF NON-HAZARDOUS SUBSTANCES. CLIENT SHALL ASSUME ALL RESPONSIBILITY FOR, INCLUDING CONTROL AND REMOVAL OF, AND SHALL RELEASE, DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS ALL MEMBERS OF ___ GROUP FROM AND AGAINST ANY LOSSES ARISING OUT OF OR RELATING TO ANY NON-___ HAZARDOUS SUBSTANCES DISCOVERED AT, BROUGHT TO, OR RELEASED AT THE PROJECT SITE, OR LEFT ON THE PROJECT SITE AFTER CONTAINERIZATION BY _____.

ARTICLE 11. ALLOCATION OF RISK

11.1 **Client’s Separate Contractors.** The Parties expressly acknowledge and agree that unless otherwise expressly provided for in Exhibit A, during the performance of the Work ___ shall not (a) supervise, direct or control Client’s other contractors or subcontractors at any tier; (b) have authority over or responsibility for the means, methods, techniques or sequences of work performed by such other contractors or subcontractors; (c) be responsible for job site safety or enforcement of federal, state, local or other safety requirements in connection with the work performed by such other contractors or subcontractors; (d) be responsible for inspecting equipment or tools used by such other contractors or subcontractors; (e) be liable for any failure of such other contractors or subcontractors to comply with applicable laws, rules, regulations, ordinances, codes, permit stipulations, or orders; or (f) be liable for the acts or omissions of such other contractors or subcontractors including their failure to perform in accordance with their contractual responsibilities.

11.2 **Mutual Waiver of Consequential Damages.** Notwithstanding anything to the contrary in this Agreement, ___ and Client waive any and all claims against each other, and under no circumstances shall either Party be liable to the other, for incidental, consequential, special, multiple, and punitive damages arising out of or relating to this

Agreement, regardless of whether such damages were foreseeable and whether or not the culpable Party was advised of the possibility of such damages, and regardless of whether a Party's claim against the other Party is based in contract (including contract termination), indemnity, warranty, tort (including negligence), strict liability or otherwise. This mutual waiver includes, but is not limited to, rental expenses, loss of use, loss of production, loss of income, loss of profit (except profit arising directly from the Services), loss of financing, loss of business, and loss of reputation.

- 11.3 Limit of Liability. To the fullest extent permitted by law, the total liability in the aggregate of _____ and its employees, subcontractors, or suppliers to Client and anyone claiming by, through or under Client, on all claims of any kind arising out of or in any way related to _____'s Work, from any cause or causes whatsoever, including, but not limited to, negligence, errors, omissions, strict liability, indemnity, or breach of contract, will not exceed one hundred percent (100%) of the compensation received by _____ under this Agreement, unless such claim is covered by insurance and in such case shall be the limit of the insurance coverage up to the specific limits set forth in this Agreement. All such liability will terminate upon the expiration of the Correction Period specified in Section 6.3. THIS SECTION SETS FORTH _____'S SOLE LIABILITY AND ENTIRE OBLIGATION AND CLIENT'S EXCLUSIVE REMEDY FOR ANY ACTION BROUGHT AGAINST _____.

ARTICLE 12. DELIVERABLES

- 12.1 Ownership of Deliverables. All Deliverables are instruments of service in respect of the Project, and, if delivered to Client during the term of this Agreement, will become the property of Client upon payment therefor. Notwithstanding the foregoing, Client's ownership of the Deliverables will not include any ownership interest in _____'s preexisting information including, but not limited to, computer programs, software, patents, patents pending, standard details, templates, figures or specifications, or _____'s seal, stamp, or certification. Furthermore, Client understands and agrees that _____ is a developer of computer software and that _____ may use its own proprietary software, as well as others properly licensed to _____, in the performance of the Work, and may develop other proprietary software during the course of performing the Work, which may include preliminary database formats and spreadsheets as well as programming procedures and code. Client understands and agrees that all such programs, efforts, and materials are and will be the exclusive property of _____ (and/or third parties). Additionally, except for the Deliverables, all field data and notes, laboratory test data, calculations, estimates, and other documents prepared by _____ will remain the property of _____.
- 12.2 Ownership and Use of Deliverables. Contractor agrees that items such as plans, drawings, photos, designs, studies, specifications, data, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the City, upon all payments due under this Agreement, is/are subject to the rights of the City in effect on the date of execution of this Agreement. Subject to the last sentence in this section and exceptions stated herein, these rights include the right to use, duplicate and disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so; provided, however, that any use on any project other than this Project, or any duplication or disclosure, shall be at the City's risk and without liability or legal exposure to _____. If an item produced by Contractor is copyrightable, Contractor may copyright it, subject to the rights of the City as set forth in this Section 12.2. The City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so; provided, however, that any use on any project other than this Project, or any such reproduction, publishing, or modification, shall be at the City's risk and without liability or legal exposure to _____. Contractor shall mark all confidential or proprietary information as such prior to furnishing it to the City. Notwithstanding anything to the contrary contained herein, the City agrees that all rights and licenses afforded to the City in this section are limited to the use by the City exclusively for the City and not commercially or with an intent to profit from such information, and the City agrees to keep such information confidential from all parties not directly involved in the permitted use of such information unless required to release the information pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code.
- 12.3 Unauthorized Use of Deliverables. Client is prohibited from providing examples of _____'s Work to any individual or entity known by, or that reasonably should be known by Client, to be a competitor of _____ for the purpose of reducing or eliminating the Work associated with this Agreement. Furthermore, Client is prohibited from providing any statistical sampling information on assessment issues, including but not limited to statistical sampling

information on production rates, remedy rates, numbers of pole change outs, types of violations, etc., that is provided to Client by ____, all of which must be treated by Client as Confidential Information. In the event any Deliverables are utilized or disclosed by Client in any manner outside the scope of, or prohibited by, this Agreement, __ reserves the right to notify directly any third party of the limitations of its unauthorized use of the Deliverables. Client expressly acknowledges that this reservation by __ is necessary to protect and preserve __'s professional reputation with respect to its work product.

ARTICLE 13. SAFETY

- 13.1 Client's Safety Requirements. Client must inform ____ of any written safety procedures and regulations applicable to the Project Site known to Client, as well as any special safety concerns or dangerous conditions at the Project Site. ____ and its employees will adhere to the written safety procedures and regulations provided by Client.
- 13.2 Project Site Safety. ____ commits to providing a safe and healthy work environment for its personnel and will require the same of its subcontractors. ____ shall be responsible for the health and safety of its employees and be responsible for its activities, and shall at all times conduct its operations under this Agreement in a manner to avoid risk of endangerment to the health and safety of persons and property. Unless expressly included in the scope of Work, __ will not have any responsibility for overall job safety for the Project or at the Project Site. If __ determines that its field personnel are unable to access required locations or perform required Work in conformance with applicable safety standards, ____ may suspend performance until its personnel can safely perform their work. ____ will promptly provide Client with written notice of the location and nature of the unsafe conditions. If Client fails to provide safe access within a reasonable time, ____ may terminate or suspend its performance in accordance with Article 14.
- 13.3 Reporting of Incidents. In the event __ is involved in any loss, injury, or damage on Client's premises, or if such injury, loss or damage involves property, equipment, or personnel of Client, or if such accident involves any third party in any manner whatsoever while __ is performing any duties within the scope of this Agreement, __ will promptly report such injury, loss, or damage to the attention of Client's designated representative. If the matter involves loss of life, serious injury, or substantial property loss or damage, this report will be made by telephone call, followed immediately by a report in writing sent via email. If the matter is of a less serious nature, notification may be made by email or by letter posted in regular United States mail. All injuries, loss or damage must be reported. The reporting of any such matter will not imply any admission of liability on the part of ____.

ARTICLE 14. TERMINATION AND SUSPENSION

- 14.1 Termination for Default. In the event of a material breach of this Agreement by either Party, the nonbreaching Party may give written notice to the breaching Party of the nature of the default and demand for cure. If the breaching Party fails to cure or materially commence to cure within ten (10) calendar days from receipt of the default notice, the non-breaching Party may provide a written notice of termination of the Agreement to the breaching Party.
- 14.2 Termination or Suspension for Convenience. Either Party may terminate or suspend this Agreement, in whole or in part by providing written notice to the other Party at least thirty (30) days prior to the effective date of termination.
- 14.3 Termination for Insolvency. Either Party has the right to immediately terminate the Agreement, by providing written notice to the other Party, in the event that (a) the other Party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (b) a substantial part of the other Party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- 14.4 Payments Due Post-Termination. ____ will be entitled to receive payment for all Work performed prior to the effective date of the suspension or termination, plus all reasonable costs associated with the suspension or termination, including, but not limited to, demobilization costs, re-stocking fees, cancellation fees, and costs incurred with respect to non-cancellable commitments. If the suspension or termination is the result of ____'s

breach, prior to paying ____, Client will be entitled to offset its reasonable, direct, documented losses to the extent caused by ____'s breach. **ARTICLE**

15. DISPUTE RESOLUTION

- 15.1 Negotiation by Executives. The Parties will attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to the project or the Agreement or the breach thereof (“**Dispute**”) promptly by negotiation. When either Party determines it has exhausted its efforts to resolve a Dispute at the Project level, that Party may provide written notice to the other Party of the Dispute. Within 15 days after the date of such notice, executives of both Parties who have authority to agree to a settlement of the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement will meet at a mutually acceptable time and place (or, otherwise, at the Project Site), and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this subsection are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties do not resolve the Dispute within sixty (60) days of a Party notifying the other of the Dispute, unless extended by mutual agreement, either Party may commence litigation.
- 15.2 Governing Law, Jurisdiction, Venue. Unless otherwise required by law, this Agreement, and any act or transactions to which they will apply, or which are contemplated hereby or hereunder, will be governed by, and construed and interpreted in accordance with, the laws of the State of Texas without regard to choice of law or conflicts of law principles. This choice of law expressly includes the applicable statutes of limitation. Venue for all actions under the Agreement will be in Caldwell County, Texas.
- 15.3 Prevailing Party. In the event of any binding dispute resolution proceeding, declaratory or otherwise, brought by a Party arising out of or relating to this Agreement, including but not limited to any breach or default of the Agreement, the prevailing Party will be entitled to recover from the other Party any and all expenses of litigation, court costs, expert and consultant fees, employee time and expenses, and reasonable attorneys’ and other legal fees associated with such proceedings (collectively, “**Litigation Expenses**”), accruing as of commencement of the proceeding and including execution and collection of any award or judgment. Notwithstanding the foregoing, if a written offer of compromise is made by either Party that is not accepted by the other Party within thirty (30) days after receipt and the Party not accepting such offer fails to obtain a more favorable judgment or award, the non-accepting Party will not be entitled to recover its Litigation Expenses (even if it is the prevailing Party) and will be obligated to pay the Litigation Expenses of the offering Party.

16. MISCELLANEOUS

- 16.1 Independent Contractor and Waiver of Benefits. ____ is an independent contractor and will not be regarded as an employee or agent of Client. ____ agrees that it will not receive, and is not eligible to participate in, any employee benefit plan, insurance program, disability plan, medical benefits plan, or any other fringe benefit program sponsored and maintained by Client for its regular active employees and Client hereby waives any rights or claims related thereto.
- 16.2 Compliance with Laws. _____ will observe all applicable provisions of the federal, state, and local laws and regulations, including those relating to equal opportunity employment.
- 16.3 Severability. If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will remain in full force and effect, and will in no way be affected, impaired, or invalidated thereby.
- 16.4 Waiver. Any waiver by either Party or any provision or condition of this Agreement will not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition unless such waiver is so expressed in writing and signed by the waiving Party.
- 16.5 Assignment. Neither Party will assign or transfer this Agreement without the prior written consent of the other Party. Moreover, as a condition of any such written consent, such assignment will be subject to the terms and

conditions herein and no greater rights or remedies will be available to the assignee. In the event of an assignment by Client, Client will provide ____ with the information necessary for notices and invoicing (as applicable) prior to the effective date of the assignment. Client hereby agrees that ____ may subcontract and/or assign some or all of the Work to one or more of its corporate affiliates to the extent necessary to provide sufficient staffing and/or to comply with applicable insurance or professional licensing requirements.

- 16.6 Captions. The captions of the articles and sections in this Agreement are intended solely for the convenience of reference and will not define, limit, or affect in any way the provisions, terms, and conditions hereof or their interpretation.
- 16.7 Integration. This Agreement represents the entire understanding and agreement between the Parties and supersedes any and all prior or contemporaneous agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both Parties.
- 16.8 Amendments. This Agreement may be modified only by a Change Order, or an amendment executed in writing by a duly authorized representative for each Party.
- 16.9 No Third Party Beneficiaries. Except as otherwise specifically provided for herein, this Agreement shall not be construed to confer any benefit on any third party not a Party to this Agreement, nor shall it provide any rights to such third party to enforce its provisions. Notwithstanding the foregoing, all liability-limiting provisions of this Agreement shall extend and inure to the benefit of all members of ____.
- 16.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.
- 16.11 Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the Client does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the Client waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement. This is an agreement for the provision of goods or services to the Client under Section 271.151 et seq. of the Texas Local Government Code.
- 16.12 Signatures. This Agreement, any amendment, and any Change Order may be executed in counterparts, each of which will be deemed an original, and all of which together will be deemed to be one and the same instrument. A copy of this Agreement and any subsequent modifications signed electronically and/or delivered by e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original manually signed copy. Each person executing this Agreement warrants that he/she is authorized to do so on behalf of the Party for whom he/she signs this Agreement.
- 16.13 Notices. Any notice permitted to be given by email shall be sent to the below representative. Any other notice required to be given pursuant to this Agreement must be in writing and sent by overnight delivery via USPS or a nationally recognized courier and delivered to the address set forth in the first paragraph above to the attention of the representative below:

If to ____, send to the attention of: _____

If to Client, send to the attention of: Steven Lewis, City Manager
slewis@lockhart-tx.org

Any notice so given will be deemed effective upon receipt. Either Party may change its representative or address effective ten (10) days after written notice thereof to the other Party.

16.14 Statutory Terms Applicable To Political Subdivisions. As required by Chapter 2270, Texas Government Code, hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

16.15 Iran, Sudan and Foreign Terrorist Organizations. ___ represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes ___ and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. ___ understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with ___ and exists to make a profit.

16.16. Form 1295. Submitted herewith is a completed Form 1295 in connection with ___’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The Client hereby confirms receipt of the Form 1295 from ___, and the Client agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. ___ and the Client understand and agree that, with the exception of information identifying the Client and the contract identification number, neither the Client nor its employees or representatives are responsible for the information contained in Form 1295; that the information contained in the Form 1295 has been provided solely by ___ and the Client has not verified such information.

16.17. Boycotts.

(a) ___ hereby verifies that they and their parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Client to comply with Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

(b) ___ hereby verifies that they and their parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the Client to comply with Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code,

as amended, and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, ‘discriminate against a firearm entity or firearm trade association’ (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association. As used in the foregoing verification, (b) ‘firearm entity’ means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) ‘firearm trade association’ means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year set forth in this Agreement.

CITY OF LOCKHART

Lew White, Mayor
