

STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND       §

**SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
(Construction Materials Testing)**

This Second Amendment (“Amendment”) is made and entered into by and between Fort Bend County, (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and UES Professional Solutions 44, LLC, (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas. County and Consultant may be referred to individually as a “Party” or collectively as the “Parties.”

WITNESSETH

WHEREAS, on or about September 25, 2024, the Parties executed and accepted that certain Agreement for construction materials testing (hereinafter “Agreement”) which is incorporated by reference as if set forth herein verbatim; and

WHEREAS, the Agreement was amended on July 8, 2025 (the “First Amendment”); and

WHEREAS, by execution of this Second Amendment, the Parties desire to amend the Agreement to provide for additional testing and to increase the Total Maximum Compensation for completion of such services, and to otherwise ratify and confirm all the terms and conditions as set forth herein.

NOW THEREFORE, in consideration of the foregoing, the Parties do mutually agree that the Agreement between the Parties is hereby amended as follows:

1. **Scope of Services.** County shall pay Consultant an additional One Thousand, Seven Hundred Eighty and 00/100 dollars (\$1,780.00) for the performance and completion of additional testing as described in Contractor’s Quote dated October 20, 2025 (the “Services”) attached hereto as Exhibit “A-2” and incorporated by reference for all intents and purposes.
2. **Limit of Appropriation.** Contractor understands and agrees that the Maximum Compensation payable to Contractor for Services rendered under this Agreement is hereby increased to an amount not to exceed Seventy-Two Thousand, Eight Hundred Fifteen and 00/100 dollars (\$72,815.00), authorized as follows:

\$59,135.00	under the Agreement
\$11,900.00	under the First Amendment
\$1, 780.00	Under this Second Amendment
<b>TOTAL</b>	<b>\$72,815.00</b>

In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Contractor clearly understands and agrees, such understanding and agreement being the absolute essence of this Agreement, that County shall have available the total maximum sum of Seventy-Two Thousand, Eight Hundred Fifteen and 00/100 dollars (\$72,815.00) specifically allocated to fully discharge any and all liabilities County may incur under the Agreement.

Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of the Agreement, that the total Maximum Compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor under the Agreement shall not under any conditions, circumstances, or interpretations thereof exceed Seventy-Two Thousand, Eight Hundred Fifteen and 00/100 dollars (\$72,815.00).

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party.

FORT BEND COUNTY

UES PROFESSIONAL SOLUTIONS 44, LLC

\_\_\_\_\_  
KP George, County Judge

Sean Bowman  
\_\_\_\_\_  
\_ Authorized Agent – Signature

\_\_\_\_\_  
Date

Sean Bowman  
\_\_\_\_\_  
Authorized Agent- Printed Name

ATTEST:

Sean Bowman  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

1/15/2026  
\_\_\_\_\_  
Date

APPROVED:

  
\_\_\_\_\_  
Facilities Management and Planning

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 72,815.00 to accomplish and pay the obligation of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

Exhibit A: Consultant's Proposal and General Conditions, dated October 20, 2025

I:\AGREEMENTS\2026 Agreements\Facilities\Alpha Testing, Inc (24-fac-100819-A2)\Second Amendment to Agreement - UES (24-fac-100819-A2).docx rb 12.4.25

# EXHIBIT A-2



October 20, 2025

Mr. James Knight  
Fort Bend County Engineering Department  
301 Jackson St. 4th Floor  
Richmond, TX 77469

Re: UES Proposal No. 116542-Rev.4  
Construction Materials Testing  
Fort Bend County Information Technology Building (Fireproofing)  
Richmond, Texas 77469

Dear Mr. Knight:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Houston area, UES is accredited by the American Association for Laboratory Accreditation (A2LA) and meets the requirements of ASTM E329. We also participate in Cement and Concrete Reference Laboratory (CCRL) and AASHTO re:source proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

**UES**



Maricruz Hernandez  
CMT Project Estimator

**CLIENT APPROVAL**

**ESTIMATED BUDGET: \$1,780.00**

Consultant offers the CLIENT the Proposal as described above. CLIENT may accept Consultant's offer by signing in the space provided below and returning a signed copy to Consultant. Such notification may be given by fax or by returning the original proposal. In the event the CLIENT authorizes work without returning a signed copy, the CLIENT agrees to be bound by the terms and conditions as stated herein. The proposal described above has been read, understood, and accepted by CLIENT effective as of the date that the executed proposal is returned to Consultant.

**EXECUTED BY CLIENT'S AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

CLIENT Business Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**ACCOUNTS PAYABLE INFORMATION**

A/P Contact Name: \_\_\_\_\_ A/P Contact Telephone: \_\_\_\_\_

\*A/P Contact Email: \_\_\_\_\_

*\*A/P Contact Email must be provided before UES can proceed with its proposed services*

**REPORT DISTRUBUTION**

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

**UES**

Construction Materials Engineering and Testing  
Basic Services and Cost Estimate

Project Name: Fort Bend County Information Technology Building (Fireproofing); Richmond, Texas 77469

<b>DESCRIPTION</b>	<b>Estimated Quantity</b>	<b>Unit Rate</b>	<b>Estimated Total</b>
<b>FIREPROOFING</b>			
Engineering Technician Services (per hour)	10	\$98.00	\$980.00
Equipment Fee (per trip)	2	\$150.00	\$300.00
Transportation Charge (per trip)	2	\$100.00	\$200.00
Project Management and Report Review (hourly)	2	\$150.00	\$300.00
<b>ESTIMATED BUDGET</b>			<b>\$1,780.00</b>

Proposal No.	116542-Rev.4
Project Name	Fort Bend County Information Technology Building (Fireproofing); Richmond, Texas 77469

**PROPOSAL ASSUMPTIONS AND BASIS FOR ESTIMATE**

General	<ol style="list-style-type: none"> <li>1. Field testing services will be provided on an "as requested" basis when scheduled by your representative. A minimum of 24 hours' notice is required to properly schedule our services. To schedule our services please contact our dispatcher at (713) 360-0462 during our office hours from 7:00 AM to 5:00 PM, Monday - Friday. UES shall not be held responsible for tests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of testing.</li> <li>2. UES requests that Client arranges for a coordination/scheduling meeting at the onset of each major work task (e.g., Earthwork - Buildings, Foundations, Concrete - Buildings) to verify testing and inspection scope, schedule, and assumptions.</li> <li>3. <b><i>During the time of this cost estimate no construction schedule was available for estimating purposes. The construction schedule is a critical item in determining a precise cost estimate for construction materials testing. In lieu of a defined construction schedule UES will estimate the project based on comparable project production rates and typical industry standards. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.</i></b></li> <li>4. All time is for a minimum of four hours or as noted and is charged Portal to Portal from UES's Houston offices.</li> <li>5. Overtime rates will be applicable for services performed in excess of 8 hours per day and on Saturdays and Sundays. Services performed on holidays will be billed at 2.0 times the regular hourly rate.</li> <li>6. <b>Estimate is valid for 90 days from the proposal date shown above.</b></li> <li>7. The contractor shall be responsible for providing a protected storage container for concrete cylinders at a point on the job site mutually agreeable with UES for the purpose of storing concrete cylinders until they are transported to the Laboratory. The container shall be constructed and equipped to maintain the environment specified for initial curing in ASTM C31 (section 10.1.2).</li> <li>8. Measurement uncertainty is not taken into account by UES when issuing statements of conformity as to whether tested items pass or fail specified values (ISO 17025-17, 7.1.3).</li> <li>9. Project Engineering services on materials engineering and testing, for consultation, analysis, report preparation and review, and supervision and scheduling of field and laboratory personnel will be charged on a "per report" basis.</li> <li>10. UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. UES also provides an extranet where CMT reports, and expenditures can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed.</li> </ol>
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## GENERAL TERMS AND CONDITIONS

### SECTION 1: BINDING AGREEMENT

1.1 By accepting the Proposal, Client accepts and agrees to be bound by all terms set forth in the Proposal and these General Terms and Conditions and any applicable addendum attached hereto. Client acknowledges and agrees that these General Terms and Conditions include certain state-specific terms and conditions that are applicable based on the location where the Services (as hereinafter defined) are to be performed. Attached hereto are State-Specific Addenda, each corresponding to a particular state or region.

1.2 If the Services are performed in Florida, Texas, California, Nevada, Oregon, Washington or Arizona, the State-Specific Addendum attached hereto is incorporated into and made a part of these General Terms and Conditions.

1.3 In the event of any conflict between these General Terms and Conditions and the terms of the applicable State-Specific Addendum, the terms of the State-Specific Addendum shall govern and control for Services performed in that state or region.

1.4 The Proposal and these General Terms and Conditions (collectively, the "Agreement") represent and contain the entire and only agreement and understanding among UES Professional Solutions, LLC, a Florida limited liability company and its affiliates (the "Company") and Client with respect to the subject matter of this Agreement and supersede any and all prior and contemporaneous oral and written agreements, understandings, representations, inducements, promises, warranties, and conditions among the parties.

### SECTION 2: SERVICES

2.1 The Company is responsible for providing the services described under the Scope of Services ("Services") of the Proposal to which these General Terms and Conditions form a part. The term "the Company" as used herein includes all the Company's agents, employees, professional staff, and subcontractors.

2.2 The Company shall provide revised or additional services, including changes to the Services necessary due to changed or unforeseen conditions, only in accordance with a written addendum or change order (collectively, "Change Order") to the Agreement agreed to by the Company and Client, and only to the extent set forth in that Change Order.

2.3 The Company shall not be responsible for any delays, fees or costs associated with adverse or unusual weather conditions that prevent the Services from being safely conducted.

2.4 The Company shall provide the personnel, equipment, Level D personal protective equipment (as defined by the Occupational Safety and Health Administration ("OSHA")), and other materials necessary to provide the Services. The Company, at its sole discretion, may retain subcontractors or other third parties to assist it in the provision of the Services.

2.5 The terms "Project" and "Site" as used interchangeably in these General Terms and Conditions refer to the land and/or construction project on which or to which the Company is to provide Services under this Agreement.

2.6 The Company shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

### SECTION 3: PROFESSIONAL STANDARD OF CARE

3.1 The Company will provide its Services under this Agreement in a manner consistent with the level of professional care and skill ordinarily exercised by similar professionals practicing contemporaneously under similar conditions in the locality of the Project. NO OTHER WARRANTY CONCERNING THE SERVICES THE COMPANY PROVIDES UNDER THE AGREEMENT OR ANY ADDENDUM OR CHANGE ORDER, EXPRESS OR IMPLIED, IS MADE, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

3.2 Client understands that subsurface investigations may involve drilling, boring, excavating or sampling through varied subsurface soil and water strata which, consistent with the prevailing standard of professional care, may result in the unavoidable or inadvertent cross-mingling of soil and water and any hazardous substances or constituents contained in them, and that this risk cannot be eliminated despite the exercise of professional care. IF SUBSURFACE INVESTIGATIONS ARE PART OF THE SERVICES, CLIENT WAIVES ANY CLAIM AGAINST THE COMPANY, AND SHALL INDEMNIFY, DEFEND, AND HOLD THE COMPANY HARMLESS FROM ANY CLAIM OR LIABILITY FOR INJURY OR LOSS ARISING FROM CROSS-CONTAMINATION RELATED TO SUCH SUBSURFACE EXPLORATIONS.

3.3 The Company will take reasonable precautions to minimize damage to the Site, but it is understood by Client that, in the normal course of the provision of the Services, including sampling or drilling, some damage to, or alteration of the Site is possible. The repair of such damage shall not be part of the Services unless explicitly specified in writing in the Agreement.

3.4 Execution and delivery of this Agreement by the Company is not a representation that the Company has visited the site, become generally familiar with local conditions under which the work is to be performed, or correlated personal observations with the requirements of the Scope of Services.

3.5 Client's payment in full of the amount owed for Services rendered shall be taken to mean that Client is satisfied with and has accepted the Company's Services.

### SECTION 4: RESPONSIBILITIES

4.1 Client is responsible for providing the Company with a clear understanding of the project's nature and scope. Client shall supply the Company with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, and designs, to allow the Company to properly complete the Services. Client assumes all liability for information not provided to the Company that may affect the quality or sufficiency of the Services.

4.2 Client acknowledges that the Company's responsibilities in providing the Services is limited to those services described in the Proposal, and the Client hereby assumes any collateral or affiliated duties necessitated by or for those Services. Such duties may include, but are not limited to, the provision of any required notices to any third party, or the securing of necessary permits or permissions from any third parties required for the Company's provision of the Services.

### SECTION 5: SITE ACCESS AND SITE CONDITION

5.1 Client will grant or obtain at its expense lawful and safe access to the Site as needed for the Company to perform the Services and will notify all affected persons and entities in writing of the Company's presence. The access shall be adequate to allow the Company to conduct the Services, including bringing and storing equipment and tools on the Site and any necessary access to exterior and interior areas. The Company shall not be responsible for any delays, fees or costs caused by delayed or restricted access that prevents or slows the delivery of the Services. If the Site is not owned or operated by Client or the Client does not otherwise have the authority to grant the Company lawful access, Client shall be responsible for obtaining, at its own expense, an access agreement for the Site and any facilities located thereon and are necessary to perform the Services. The Company reserves the right to delay, without penalty, any Site visit and the provision of Services if a site access agreement, in the Company's reasonable judgment and discretion, would impose conditions, liabilities or risks on the Company in excess of those set forth in these General Terms and Conditions or the Agreement. IF THE SITE IS NOT OWNED BY CLIENT, CLIENT AGREES TO DEFEND, RELEASE, AND HOLD THE COMPANY, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS (THE "COMPANY INDEMNITEES") HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ALLEGED BY THE SITE OWNER OR THE SITE OWNER'S EMPLOYEES, AGENTS, CONTRACTORS OR OTHER PERSONS OR ENTITIES ARISING FROM THE COMPANY'S PERFORMANCE OF SERVICES AT SUCH SITE.

5.2 Client shall be responsible for the safety of the Site where the Project is conducted and for providing a safe environment for the Company to provide the Services. The Company shall be responsible for the safe and compliant conduct of its personnel at the Site and shall also comply with the reasonable and lawful work rules for the Site. As required by applicable laws, the Company will prepare a site-specific Health and Safety Plan (HASP) applicable to its personnel for the Services provided at the Site. The Company shall not be responsible for the safety of other personnel at the Site, nor shall it be responsible for ensuring that the Site complies with environmental, health and safety laws, or reporting any unsafe conduct or non-compliance that it

may observe. If the Company encounters conditions at the Site that are unsafe for its personnel, it reserves the right at its sole discretion to suspend or halt work until such conditions are cured. The Company shall not be responsible for any fees, costs or damages associated with any safety-related delays. Unless otherwise provided for in the Agreement, the Company shall not work in conditions that require personal protective equipment beyond that classified as Level D by OSHA, unless otherwise identified in the Proposal.

**5.3** Client is responsible for accurately identifying to the Company in writing the existence and location of all subterranean structures and utilities on or affecting the Site and the Services. The Company will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by Client. If included in the Agreement, Client may authorize the Company to conduct applicable private utility identification and clearance requirements on behalf of Client.

**5.4** Unless otherwise stated in the Proposal, any soil or groundwater monitoring activities that are included in the Services are based on the assumption that soil borings and monitoring wells can be installed using standard truck-mounted drilling equipment, the locations are accessible to such equipment, and that surface conditions at each location consists of non-reinforced asphalt or concrete not exceeding six (6) inches in thickness and no concrete or asphalt cutting will be required. If the Company encounters materially different conditions at the Site, the Company shall inform Client, and a Change Order shall be agreed to that addresses any changes in schedule, fees or costs associated with the changed conditions.

#### SECTION 6: HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CONDITIONS

**6.1** Client represents it has informed the Company of all known or suspected Hazardous Substances on, under or near the Site of which it is aware, and that it has provided the Company with all studies, reports, investigations, or similar documents in its possession about the environmental conditions at the Site, including any documents and correspondence involving Federal, State or local environmental, health or safety regulatory notifications.

**6.2** For purposes of the Agreement and these General Terms and Conditions, the term “Hazardous Substances” includes materials defined or regulated as hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, pollutants, or toxic substances under any Federal, State or local environmental, health, safety or natural resources law, statute, regulation or ordinance, including but not limited to petroleum products, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos, and any other material or substance listed or identified by the United States Environmental Protection Agency or any similar State or local agency as presenting a potential danger to health, safety or the environment.

**6.3** Except to the extent required by law, the Company shall not be responsible for making any disclosures to governmental agencies or the Site owner regarding the presence or release of Hazardous Substances on, under, from or around a Site.

**6.4** **FOR ENVIRONMENTAL INVESTIGATION, GEOTECHNICAL AND REMEDIATION PROJECTS**, the discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating a Change Order. Although unlikely, Client acknowledges that such a discovery of Hazardous Substances may make it necessary for the Company to take immediate measures to protect the health and safety of its employees and other persons, or to arrange for others to do so, including and up to delaying or terminating work. Client agrees to compensate the Company for all expenses incurred or caused by the discovery of unanticipated Hazardous Substances or environmental conditions encountered at the Site, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

**6.5** **FOR ENVIRONMENTAL INVESTIGATION AND REMEDIATION PROJECTS**, all substances on, in, or under Site, or obtained from Site as samples or as byproducts of the sampling process, shall be Client’s property. The Company shall not be required to sign or certify a waste manifest, disposal ticket, or similar document relating to the transportation or disposal of wastes or Hazardous Substances. The Company may serve as Agent for Client if requested under a separate agreement and authorization. Client shall be considered the “generator” of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and agrees that it shall assume all duties as “generator” of any waste material associated with the Services. Further, Client agrees that the Company is not a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances and shall not be so identified on any document.

**FOR GEOTECHNICAL PROJECTS**, all substances on, in, or under the Site, or obtained from the Site as samples or as byproducts of the sampling process, shall be Client’s property. Unless otherwise expressly specified in the Agreement or the Services, the characterization, management and disposition of substances, including Hazardous Substances, generated during the Services (including, but not limited to, wastes, samples, produced soils or fluids, cuttings, or protective gear or equipment, etc.) is the sole responsibility of Client. Client shall be considered the “generator” of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and agrees that it shall assume all duties as “generator” of any waste material associated with the Services. Further, Client agrees that the Company is not and shall not be identified as a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances on any document. Unless specifically provided for in the Agreement, the Company shall not have any responsibilities with respect to the storage or preservation of samples, and Client agrees that the Company is not responsible or liable to Client for any loss of samples that are shipped to a testing facility or retained in storage.

**6.6** The Company shall not have custody of any monitoring wells or permanent sampling locations installed as part of the Project, and shall not be responsible for proper maintenance, repair, or closure of such wells, unless otherwise provided for in the Agreement.

**6.7** CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD THE COMPANY INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY’S FEES AND CONSULTANTS’ FEES, COSTS OF DELAY OF THE SERVICES, AND ANY COSTS ASSOCIATED WITH POSSIBLE REDUCTION TO THE VALUE OF THE PROJECT OR THE SITE IN WHICH IT IS SITUATED) ARISING FROM (I) THE COMPANY’S DISCOVERY OF OR ITS EMPLOYEES’ OR SUBCONTRACTORS’ EXPOSURE TO HAZARDOUS SUBSTANCES OR SUSPECTED SUBSTANCES RELATED TO THE SERVICES, TO THE EXTENT CAUSED BY CLIENT’S NEGLIGENCE ACTS, OMISSIONS OR WILLFUL MISCONDUCT; (II) ANY DISCLOSURES THE COMPANY IS REQUIRED TO MAKE BY LAW REGARDING HAZARDOUS SUBSTANCES OR ENVIRONMENTAL CONDITIONS AT A SITE; (III) ANY CLAIMS MADE ALLEGING THAT (A) THE COMPANY IS AN OWNER OR OPERATOR OF THE SITE AT WHICH THE SERVICES ARE RENDERED; (B) THE COMPANY IS THE GENERATOR, STORER OR TREATER OF HAZARDOUS SUBSTANCES AT SUCH SITE; OR (C) THAT THE COMPANY ARRANGED FOR THE TRANSPORTATION OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES FROM THE SITE; (IV) ANY VIOLATION BY CLIENT OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER, DECREE OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES; OR (V) ANY CLAIMS MADE BY THIRD-PARTIES WITH RESPECT TO ALLEGED EXPOSURES TO OR DAMAGES CAUSED BY HAZARDOUS SUBSTANCES AT OR FROM THE SITE OR DURING OR RELATED TO ANY PROJECT OR THE PROVISION OF SERVICES, TO THE EXTENT CAUSED BY CLIENT’S NEGLIGENCE OR WILLFUL MISCONDUCT.

#### SECTION 7: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS

**7.1** If the Services include oversight, monitoring or observation of work being conducted by third parties (other than the Company subcontractors), such Services shall be conducted solely to determine that the work being overseen, monitored, or observed is in general conformity to the contractual requirements between Client and such third parties. Client shall have sole responsibility and authority to reject, suspend or stop the work of such third parties, or modify or terminate any agreement between Client and such third parties.

**7.2** The Company shall not have the responsibility or authority to stop, suspend, or modify the work of such third parties, and does not guarantee that work it inspects conforms in all respects to the design, or to applicable laws, statutes, regulations, rules or codes, and it shall have no liability for design or construction defects, or the failure of Client’s designers or contractors to comply with their contractual obligations.

**7.3** Neither the activities of the Company pursuant to this Agreement, nor the presence of the Company or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon the Company any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety or environmental conditions or compliance at the Project Site. Client acknowledges that Client or its contractor is solely responsible for Project jobsite safety and compliance with environmental, health and safety laws.

**7.4** Client is responsible for scheduling all inspections and construction materials testing (“CMT”) activities of the Company. The Company will not be responsible for tests and inspections that it does not perform due to Client’s failure to timely schedule work. Client shall at the time of execution of the Agreement provide the Company with a proposed schedule for tests and inspections the Company shall perform. Client will give reasonable notice of all changes to that schedule. The Company shall not be required to conduct any tests or inspections on less than 72 hours written notice, nor after normal business hours or on weekends or holidays.

#### SECTION 8: BILLING AND PAYMENT

**8.1** The Company will submit invoices to Client monthly or upon completion of Services. Invoices will show charges for different personnel and expense classifications. Partially completed items of work for which a fee has been specified may be billed based upon the percentage of completion as estimated by the Company. Reimbursable expenses, those outside of the scope of the proposed Services, will be charged to the Client at cost plus an applicable fee. Payment is due 30 days after presentation of invoice and is past due 31 days from invoice date. Client agrees to pay a finance charge of the lesser of one and one-half percent (1 ½ %) per month, or the maximum rate allowed by law, on past due accounts. If the Company incurs any expenses to collect overdue billings on invoices, the sums paid by the Company for reasonable attorneys' fees, court costs, the Company's time, the Company's expenses, and interest will be due and owing by the Client. Client agrees that the Company may refuse to release to Client any reports, findings, data, and other work product until it has been paid in full for Services rendered.

#### SECTION 9: OWNERSHIP AND USE OF DOCUMENTS; INTELLECTUAL PROPERTY

**9.1** All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the Company, as instruments of service, shall remain the property of the Company. Neither Client nor any other entity shall change or modify the Company's instruments of service. The Company disclaims any and all responsibility and liability for problems that may occur during implementation of the Company's plans, specifications, or recommendations when Company is not retained to observe such implementation. The Company will retain all pertinent records relating to the Services for a period of "five years or such longer period" of time required by applicable accrediting agency, unless specified in the Scope of Services following submission of the report or completion of the Services, during which period the records will be made available to the Client in a reasonable time and manner, subject to payment of a reasonable fee for the time of the Company's employees to assemble and transmit those documents.

**9.2** All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the Company, are prepared for the sole and exclusive use of Client, and may not be given to any other entity, or used or relied upon by any other entity, without the express written consent of the Company. Such written consent may take the form of a "reliance letter" which must be agreed to by such other person or entity to whom the Services and instruments of service may be disclosed, and for which a separate fee will be charged. The Company shall be entitled to injunctive relief preventing/prohibiting any disclosure, reliance or attribution prohibited hereunder, and CLIENT SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COMPANY FROM ANY LOSSES ARISING FROM OR RELATED TO SUCH UNAUTHORIZED DISCLOSURE, ATTRIBUTION OR RELIANCE. Client is the only entity to which the Company owes any duty or duties, in contract or tort, pursuant to or under this Agreement.

**9.3** The Company shall retain sole and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, models, software, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by the Company prior to the date of this Agreement or created or modified by the Company during the provision of the Services.

**9.4** Each party may disclose to the other party certain information that it considers to be confidential ("Confidential Information") provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential." In no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is known to the party receiving such information prior to disclosure or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

#### SECTION 10: RISK ALLOCATION AND INDEMNIFICATION

**10.1** CLIENT AGREES THAT THE COMPANY'S LIABILITY FOR ANY DAMAGE ON ACCOUNT OF ANY BREACH OF CONTRACT, ERROR, OMISSION, OR PROFESSIONAL NEGLIGENCE WILL BE LIMITED TO A SUM NOT TO EXCEED THE GREATER OF \$50,000 OR THE COMPANY'S FEE. If Client prefers to have higher limits on contractual or professional liability, the Company agrees to increase the limits up to a maximum of (i) \$1,000,000.00 upon Client's written request at the time of accepting the Proposal provided that Client agrees to pay an additional consideration of the greater of five percent of the total fee for Services or \$1,000.00, or (ii) \$2,000,000.00 upon Client's written request at the time of accepting the Proposal provided that Client agrees to pay an additional consideration of the greater of ten percent of the total fee for Services or \$2,000.00. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional contractual or professional liability insurance.

**10.2** CLIENT SHALL NOT BE LIABLE TO THE COMPANY AND THE COMPANY SHALL NOT BE LIABLE TO CLIENT FOR ANY PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOSS OF USE, AND LOST SAVINGS) INCURRED BY EITHER PARTY DUE TO THE FAULT OF THE OTHER, REGARDLESS OF THE NATURE OF THE FAULT, OR WHETHER IT WAS COMMITTED BY CLIENT OR THE COMPANY, THEIR EMPLOYEES, AGENTS, OR SUBCONTRACTORS; OR WHETHER SUCH LIABILITY ARISES IN BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STATUTORY, OR ANY OTHER CAUSE OF ACTION.

**10.3** As used in this Agreement, the terms "claim" or "claims" mean any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or any other act giving rise to liability.

**10.4** Subject to the provisions of the limitation of liability described in this Section, Client and the Company each agree to indemnify and hold harmless the other party and the other party's affiliated companies, officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are legally determined to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of Services. If claims, losses, damages, and judgments are legally determined to be caused by the joint or concurrent negligence of Client and the Company, they shall be borne by each party in proportion to its negligence.

**10.5** Notwithstanding any other term or provision in this Agreement, in recognition of the relative risks, rewards and benefits of the work being performed by the Company to both the Client and the Company, the risks have been allocated such that the Client agrees and acknowledged that, to the fullest extent permitted by law, the total liability of the Company to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement from any cause or causes of action whatsoever, whether arising out of contract, negligence, strict liability in tort, or warranty, shall not exceed the amount specified in Section 10 of the General Terms and Conditions.

#### SECTION 11: INSURANCE

**11.1** The Company represents it has Worker's Compensation insurance in force, that it has commercial general liability coverage in the amount of \$1,000,000.00 per occurrence and has professional liability insurance in the amount of \$1,000,000.00 per claim.

**11.2** Client shall maintain such insurance as is necessary to fully underwrite Client's defense and indemnity obligations set forth herein, and shall, upon request by the Company, provide proof to the Company to verify such insurance.

#### SECTION 12: DISPUTE RESOLUTION

**12.1** All claims, disputes, and other matters in controversy between the Company and Client arising out of or in any way related to this Agreement or any Addendum or Change Order shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the Company shall not be required to arbitrate any legal and/or equitable claims (including

statutory and equitable liens) for collection of monies due. The successful party in any such action will be entitled to recover its reasonable attorneys' fees, expert witness fees, and other claim-related expenses and court costs incurred, and also the time value at prevailing rates of its employees reasonably incurred in prosecuting or defending the claims, with any claims against the Company subject to the limitations in Section 10. For the purposes hereof, "successful party" shall mean a party who receives an award greater than fifty (50%) percent of its claimed amount.

**12.2** The sole and exclusive venue for any dispute resolution proceeding shall be the location in which the Company office performing the Services is located. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Company office performing the Services is located.

**12.3** Notwithstanding the foregoing, all claims, including for negligence or any other cause whatsoever that the Client has or claims to have against the Company, shall be deemed waived unless (i) Client notifies the Company of the claim or claims within thirty (30) days of discovery thereof, and (ii) if the Client contends that a claim exists against the Company for negligence or another violation of a standard of care owed by the Company, Client has first provided the Company with a written certification executed by an independent design professional currently practicing in the same discipline as the Company. The certification shall: a) identify the name of the professional; b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in this Agreement; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to the Company not less than thirty (30) calendar days prior to the institution of any arbitration or judicial proceeding.

**12.4** NOTWITHSTANDING THE FOREGOING, THE COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIM DISCOVERED BY CLIENT MORE THAN ONE YEAR AFTER DELIVERY OF THE LAST ISSUED REPORT BY THE COMPANY FOR THE SERVICES. THE PARTIES AGREE THAT THIS PROVISION IS MATERIAL TO THE DECISION OF THE COMPANY TO ENTER INTO THIS AGREEMENT, THAT IT IS A REASONABLE MEASURE TO ALLOCATE AND INSURE AGAINST RISK, AND THAT IT DOES NOT VIOLATE PUBLIC POLICY.

#### SECTION 13: TERMINATION

**13.1** This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or in the case of a force majeure event such as terrorism, act of war, public health or other emergency. Such termination shall not be effective if such substantial failure or force majeure has been remedied before expiration of the period specified in the written notice. In the event of termination, the Company shall be paid for services performed to the termination notice date plus reasonable out of pocket termination expenses incurred or paid by the Company in connection with such termination and the winding down of its operations.

**13.2** In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by this Agreement, the Company may complete such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct out of pocket costs incurred or paid by the Company in completing such analyses, records, and reports.

#### SECTION 14: SOLICITATION OF EMPLOYEES

**14.1** Client agrees that during the term of the Agreement, and for a period of one (1) year after the last date on which the Company has provided Services, Client shall not, directly or indirectly, solicit or attempt to solicit for employment, or contract directly or indirectly with, any employee of the Company except as authorized in writing by the Company.

#### SECTION 15: ASSIGNS

**15.1** Neither Client nor the Company may assign this Agreement or assign or delegate any of its rights or obligations without the prior written consent of the other party.

#### SECTION 16: SURVIVAL

If any of the provisions of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities will survive termination of this Agreement for the period of all applicable statutes of limitations to which they relate.

#### SECTION 17: MISCELLANEOUS

**17.1** This Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

**17.2** Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of the Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under the Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

**17.3** The headings in these General Terms and Conditions are for reference only and are not intended to form part of the Agreement between the Parties.

**17.4** It is agreed that this Agreement is entered into by the parties for the sole benefit of the parties to the Agreement, and that nothing in the Agreement shall be construed to create a right or benefit for any third party.

**17.5** To the extent that a statute of limitations for any cause of action against the Company arising from this Agreement can be modified contractually in accordance with law, and the relevant statute of limitations for any claim arising of or relating to this Agreement, or the Services provided by Company r, is greater than two (2) years, the relevant statute of limitations shall be two (2) years from the date Company last provided Services. The parties agree that this provision is material to the decision of Company to enter into this agreement, that it is a reasonable measure to allocate and insure against risk, and that it does not violate public policy. This section shall not be construed as an agreement to increase the statute of limitations for any causes of action that are otherwise barred by law.

**17.6** All future services rendered by the Company at Client's request for the Project described in the Proposal (whether by Change Order, Addendum, or amendment to this Agreement) shall be conducted under the terms of this Agreement.

#### CLIENT APPROVAL

In the event the Client authorizes work without returning a signed copy of the Proposal, the Client agrees to be bound by the General Terms and Conditions as stated herein. The Proposal presented has been read, understood, and accepted by the Client effective as of the date that the executed Proposal is returned to the Company.

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STATE-SPECIFIC ADDENDUM – TEXAS

SECTION 1: ADDENDUM TO AGREEMENT

**1.1** This Texas addendum (this “Addendum”) is made and entered into by and between the Company and Client and is effective as of the date of execution of the Agreement if the Services are performed in the State of Texas, and this Addendum is incorporated into and made a part of the General Terms and Conditions solely with respect to the Services covered by this Addendum.

SECTION 2: BILLING AND PAYMENT

**2.1** The fees and charges reflected in the Company’s proposal for services are exclusive of any sales, use, personal property, value added and goods/services taxes. Where applicable, such taxes shall appear as a separate item on the Company’s invoice and Client shall be liable for the payment of such taxes to the Company. Notwithstanding the foregoing, Client shall not be responsible for any foreign, federal, state, or local taxes based on the Company’s net income or receipts, or such other taxes based on the Company doing business in any particular jurisdiction.

SECTION 3: INDEMNITY

**3.1** IN ADDITION TO AND NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL CONDITIONS, CLIENT AGREES, TO THE FULLEST EXTENT PROVIDED BY LAW, TO RELEASE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY ), INDEMNIFY, AND HOLD THE COMPANY INDEMNITEES HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY’S FEES) OR LIABILITIES FROM OR BY ANY PERSON OR ENTITY ARISING FROM (1) ACTS OR OMISSIONS BY CLIENT, CLIENT’S AGENTS, STAFF, AND OTHERS EMPLOYED BY OR CONTRACTED TO CLIENT, INCLUDING ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS, AND CONSULTANTS, WHETHER OR NOT THE COMPANY IS RESPONSIBLE IN WHOLE OR IN PART FOR THE ACTS OR OMISSIONS FOR WHICH CLIENT IS INDEMNIFYING THE COMPANY AND (2) THE PROVISION OF THE SERVICES BY THE COMPANY EXCEPT TO THE EXTENT CAUSED BY THE COMPANY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH EXCEPTION SUBJECT TO THE LIMITS SET FORTH SECTION 10 OF THE GENERAL TERMS AND CONDITIONS. FOR THE AVOIDANCE OF DOUBT, CLIENT’S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 3.1 INCLUDE, WITHOUT LIMITATION, INDEMNIFICATION FOR ANY CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF THE COMPANY.

**3.2** THE COMPANY AGREES TO INDEMNIFY, AND HOLD CLIENT HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING TO THE EXTENT SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY THE COMPANY IN THE PROVISION OF THE SERVICES, SUBJECT TO THE LIMITS SET FORTH IN SECTION 10 OF THE GENERAL TERMS AND CONDITIONS.

**3.3** To the extent either party’s damages are covered by available insurance, Client and the Company waive all rights of subrogation against each other and against the contractors, subcontractors, consultants, agents, and employees of the other, except such rights as they may have to the proceeds of such insurance.

SECTION 3: EXPRESS NEGLIGENCE RULE

**3.1** WITH RESPECT TO CLIENT’S INDEMNIFICATION OBLIGATIONS HEREUNDER, THESE TERMS AND CONDITIONS COMPLY WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PART