

CONSULTATION AGREEMENT WITH THE CITY OF GEORGETOWN

This Consultation Agreement (the "Agreement") is entered into and made effective on the _____ day of _____, 2019 by and between Schneider Engineering, Ltd. ("Consultant") and the City of Georgetown, Texas ("City").

1. **Scope of Services.** Consultant agrees to provide such services as further described in **Exhibit A**, which is attached and incorporated herein. Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph four of this Agreement shall be made and approved by the City prior to the Consultant providing such services, or the right to payment for such additional services shall be **waived**. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Agreement, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.
2. **City Terms Prevail.** In the event there is a conflict between a term in **Exhibit A** and a term in this agreement, the terms of this agreement shall prevail.
3. **Total Compensation.** The total compensation for the Initial Term paid by the City to the Consultant, not including expenses, under this agreement shall not exceed \$180,000.00. The total compensation for any renewal terms if applicable shall not exceed \$165,000.00, not including expenses. Payment will be made in accordance with **Exhibit B**, which is attached and incorporated herein.
4. **Term.** The Initial Term of this Agreement shall be for one year beginning on the effective date. The Agreement may be renewed for up to three additional one-year terms by mutual agreement of the Parties.
5. **Amendments.** Any changes to the terms of this agreement will not be effective unless in writing and signed by both parties.
6. **Insurance.** Consultant shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are set forth in **Exhibit C**. Consultants insurance certificate satisfying the City insurance requirements is attached as **Exhibit D**.
7. **Indemnity.** To the fullest extent permitted by law, Consultant agrees to defend, indemnify and hold harmless the City, its Council members, officials, officers, agents, employees, and volunteers (separately and collectively referred to in this paragraph as "indemnitee") from and against all claims, damages losses and expenses (including but not limited to attorney's fees) arising out of or resulting from any negligent act, error or omission, intentional tort or willful misconduct, intellectual property infringement or failure to pay a subconsultant, subcontractor,

or supplier pursuant to this agreement by Consultant, its employees, subcontractors, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. IF THE CLAIMS, ETC. ARE CAUSED IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARATIVE BASIS, AND ONLY FOR THE AMOUNT FOR WHICH CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.

Consultant shall procure liability insurance covering its obligations under this section.

It is mutually understood and agreed that the indemnification provided for in this Section 7 shall survive any expiration, completion or termination of this agreement.

Release by Consultant. The Consultant releases, relinquishes and discharges the City, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either party or other third parties) and any loss or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with the work it performed under this Agreement. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance.

8. **Dispute Resolution.** If either the Consultant or the City has a claim or dispute, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.
9. **Ownership of Documents.** The City shall retain ownership of all associated work products and documentation obtained from or created by the Consultant pursuant to this Agreement. Consultant shall deliver all documents or other work product to the City upon request, including original versions if so specified in the request.
10. **Payment Terms.** All payments will be processed in accordance with Texas Prompt Payment Act, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Consultant within thirty days after of receipt of a correct invoice for services. The Consultant may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for

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payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Consultant concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Consultant and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the invoice is not mailed to the City in accordance with Agreement.

11. **Termination for Convenience.** The City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Consultant shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Consultant, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination.
12. **Termination for Cause.** In addition to the termination rights described above, either party may terminate this Agreement effective upon written notice to the other if the other breaches any of the terms and conditions of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party. In addition to all other remedies available under law and in equity, the City may remove the Consultant from the City's Vendor list in the event that this Agreement is terminated for cause and any offer submitted by the Consultant may be disqualified for up to three (3) years.
13. **Non-Appropriation.** This Agreement is a commitment of City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the city does not appropriate funds sufficient to purchase the services. The City may terminate for non-appropriation by giving the Consultant a written notice of termination at the end of its then current fiscal year.
14. **Notices.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first-class mail of the United States properly, or sent via electronic means, addressed to the appropriate party at the address set forth below:

Notice to the Consultant:

Schneider Engineering
ATTN: Steve Moffitt
1509 Emerald Parkway, Ste. 103
College Station, Texas 77845
smoffitt@se-texas.com

Notice to the City:

City of Georgetown
ATTN: City Manager
P.O. Box 409
Georgetown, Texas 78627
david.morgan@georgetown.org

With a copy to:

City of Georgetown
ATTN: City Attorney
P.O. Box 409
Georgetown, Texas 78627
charlie.mcnabb@georgetown.org

15. **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Consultant's services shall be those of an independent contractor. The Consultant agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Consultant shall not be within protection or coverage of the City's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.
16. **Force Majeure.** The City and the Consultant will exert all efforts to perform the tasks set forth herein within the proposed schedules. However, neither the City nor the Consultant shall be held responsible for inability to perform under this Agreement if such inability is a direct result of a force substantially beyond its control, including but not limited to the following: strikes, riots, civil disturbances, fire, insurrection, war, embargoes, failures of carriers, acts of God, or the public enemy.
17. **No Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
18. **Nondiscrimination.** The Consultant, with regard to the work performed by it after award and prior to completion of this Agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by any federal, state or local law.

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19. **Right to Audit.** The Consultant agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, Consultant invoices (including subconsultant invoices) and back up documentation for fees and expenses related to the performance under this Agreement. The Consultant shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Consultant are resolved, whichever is longer.
20. **Advertising and Publicity.** Consultant shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.
21. **Confidential Information.** Each party agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement or as required by the Texas Public Information Act or other applicable law. Confidential Information shall be designated and marked as such at the time of disclosure. Each party agrees to secure and protect the other party's Confidential Information in a manner consistent with the maintenance of the other party's confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants, or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The provisions of this paragraph shall survive the term of the Agreement.
22. **Contractor Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
23. **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*], Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
24. **Severability.** This Agreement is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Agreement if it can be given effect without the invalid parts.
25. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue shall be located in Williamson County, Texas.
26. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and any subsequent successors and assigns; provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Consultant without the prior written consent of the City. Any attempted assignment or delegation by the Consultant shall be void unless made in conformity with this Paragraph.

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27. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Consultant.

28. **Entire Agreement.** This Agreement, with all exhibits, includes the entire agreement of the City and the Consultant and supersedes all prior and contemporaneous agreements between the parties, whether oral or written, relating to the subject of this agreement.

THE CITY OF GEORGETOWN

SCHNEIDER ENGINEERING, LTD.

Name

Name

Title

Title

Date Signed: _____

Date Signed: _____

Approved as to form:

_____, Asst. City Attorney

Exhibit A

Scope of Services

The Consultant will provide the following services:

1. Provide expertise related to current trends and best practices in the energy market
2. Work with management to develop a comprehensive energy risk management policy and protocols related to the policy that meets the City's risk management tolerance
3. Provide recommendations to management on protocols and processes to oversee portfolio management services and develop transition plan for new portfolio management services
4. Implement selected improvement recommendations from your firm, as well as from other consultants, for changes to achieve performance enhancements in the City's energy resources management function
5. Work with city manager's office and other consultants to implement recommendations to improve the City's energy resource management function
6. Develop regular forecasts for revenues and power costs, as well as load surpluses and shortages
7. Evaluate proposals from energy portfolio manager to ensure a thorough review of risks and opportunity costs to support management decisions
8. Provide additional technical support on energy risk and resource management functions as needed
9. Provide advice on power and gas hedging services, evaluate proposals, term sheets and confirmations, as well as personnel in managing power supply price and performance risk.
10. Provide regular reporting of purchased power and portfolio management activity to senior city staff and the city council.
11. All services provided for the term will be conducted under confidentiality as provided by law related to competitive matters.

Exhibit B

Payment Terms

Compensation is based on *actual* hours of work/time devoted to providing the services at the rates provided below and the City will reimburse the Consultant for *actual*, non-salary expenses as provided below.

The Consultant must submit *monthly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

POSITION	HOURLY RATE
Engineer VIII (A) / President	\$200.00
Engineer VIII (B) / Principal	\$185.00
Engineer VII / Senior Consultant IV	\$170.00
Engineer VI	\$155.00
Engineer V	\$140.00
Engineer IV	\$125.00
Engineer III	\$110.00
Engineer II	\$100.00
Engineer I	\$85.00
Project Manager III / Senior Consultant III	\$155.00
Project Manager II / Senior Consultant II	\$140.00
Project Manager I / Senior Consultant I	\$125.00
Project Analyst IV	\$120.00
Project Analyst III	\$105.00
Project Analyst II	\$90.00
Project Analyst I	\$75.00
Technician VI	\$130.00
Technician V	\$115.00
Technician IV / Designer III	\$105.00
Technician III / Designer II	\$95.00
Technician II / Designer I	\$85.00
Technician I	\$75.00
Technician Assistant	\$60.00
Administrative Staff	\$65.00

Administrative Assistant	\$55.00
Clerical	\$50.00

PERSONNEL OVERTIME CHARGES

Hourly personnel overtime work will be invoiced at the base billing rate plus a multiplier of 1.5 times the employee hourly rate.

REIMBURSABLE EXPENSES

- Mileage Reimbursement: \$0.57/mile for cars, \$0.75/mile for trucks, \$0.85/mile for fully equipped off-road survey trucks
- The following will be billed at cost plus 12%:
 - Copying costs
 - Transportation, subsistence and lodging
 - Approved sub-contract services

Exhibit D

Insurance Requirements

- I. The Consultant agrees to maintain the types and amounts of insurance required in this Agreement throughout the term of the Agreement. The following insurance policies shall be required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Workers' Compensation
 - D. Professional Liability

- II. For each of these policies, the Consultant's insurance coverage shall be primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Agreement shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City *before* work commences.

- III. General Requirements Applicable to All Policies.
 - A. Only licensed insurance carriers authorized to do business in the State of Texas shall be accepted.
 - B. Deductibles shall be listed on the certificate of insurance and are acceptable only on an "occurrence" basis.
 - C. "Claims made" policies are not accepted, except for Professional Liability insurance.
 - D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Georgetown.
 - E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
 1. The insurance company is licensed and authorized to do business in the State of Texas
 2. The insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO
 3. All endorsements and coverages are included according to the requirements of this Agreement
 4. The form of notice of cancellation, termination, or change in coverage provisions is specified in this attachment

- F. The City of Georgetown, its officials, agents, employees, and volunteers are to be listed as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, employees, and volunteers.

IV. Commercial General Liability requirements:

- A. Coverage shall be written by a carrier rated “A: VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
- C. Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall not exclude: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, Explosion, Collapse and Underground coverage.
- F. The City shall be listed as Additional Insured, and the policy shall be endorsed to waive rights of subrogation, to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.

V. Business Automobile Liability requirements:

- A. Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- D. The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

VI. Workers' Compensation Insurance requirements:

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Consultant, the Consultant, *all* employees of any and all subconsultants, and all other persons providing services on the Project must be covered by a workers compensation insurance policy, either directly through their employer's policy (the Consultant's, or subconsultant's policy) or through an executed coverage agreement on an approved DWC form. Accordingly, if a subconsultant does not have his or

her own policy and a coverage agreement is used, Consultants and subconsultants *must* use that portion of the form whereby the hiring Consultant agrees to provide coverage to the employees of the subconsultant. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Consultant may not be used.

- B. The workers compensation insurance shall include the following terms:
1. Employer's Liability limits of \$1,000,000 for each accident is required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VII. Professional Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City upon request.
- C. For "claims made" policies, the availability of a 24-month extended reporting period is necessary. The retroactive date shall be shown on the certificate of liability insurance.

Exhibit E
Certificate of Insurance