

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of June 5, 2018 ("Effective Date") between The City of Deer Park ("Owner") and A&R Engineering and Testing, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: The 2016 Street Replacement Project ("Project").

Engineer's services under this Agreement are generally identified as follows: "Services"

Owner and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: _____. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

A. Owner shall pay Engineer for Services as follows:

1. The total compensation for Services and reimbursable expenses is estimated to be \$57,500.00 (per Exhibit "A")

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.
- c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
- d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this

Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions,

Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 - 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 - 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project

affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Deer Park

Engineer:

By: Jerry Mouton
Print name: _____
Title: Mayor
Date Signed: _____

By: _____
Print name: _____
Title: _____
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

State of: _____

Address for Owner's receipt of notices:
710 E. San Augustine
Deer Park, TX 77536

Address for Engineer's receipt of notices:



A&R ENGINEERING and TESTING, INC.

Geotechnical & Material Engineers • Registration No. F-4123

May 17, 2018

City of Deer Park
710 E. San Augustine Street
Deer Park, Texas 77536

Attention: Mr. Wade Miller

Reference: Proposal for Testing Services for Pavement Reconstruction & Utility Improvements
Deer Park Project No: 3580-16

Dear Mr. Miller:

A&R Engineering and Testing, Inc. is pleased to submit this proposal for the above referenced project. *The engineering and testing on this project is to be charged in accordance with A&R General FEE schedule submitted to your office.*

Quality Assurance

A&R Engineering and Testing, Inc. strives to maintain the finest in laboratory and field services. The combined expertise of our personnel assures you of quality and timely work.

We will perform testing services associated with construction of the above referenced project in accordance with engineering drawings and specifications.

We will require an approved set of drawings and specifications for the referenced project.

Completion of all testing services will coincide with duration of construction of the referenced project.

Project Cost

A&R will perform all testing to provide adequate quality control for this project as scheduled by you or your firms representative for this project. We have estimated the cost to be \$57,500.00.

We look forward to working with you on this project. *Agreement to this proposal can be acknowledged by signing below and returning a copy to our office.* If you have any further questions or require additional information, please do not hesitate to call.

A & R Engineering and Testing, Inc.

Sincerely,



Mark E. Howard, SET
General Manager

MEH/jz

This proposal is accepted and authorized by:

(Company\Inc.)

(Print Name)

(Title)

(Address)

(Signature)

(City, State, and Zip Code)

(Date)

(Telephone)

I:\proposals\cmt\2018\18PC13615, Deer Park improvements, 3580-16.wpd



A&R ENGINEERING and TESTING, INC.

Geotechnical & Material Engineers • Registration No. F-4123

2017 FEE SCHEDULE

(Effective January 1, 2017)

CONSTRUCTION MATERIAL TESTING AND INSPECTION SERVICES

Construction materials testing and inspection services, to include project planning and coordination, engineering consultation and review, plus report preparation are based on the actual time that the professional, technician and support personnel are directly chargeable to the project, per hour.

Professional

Principal Engineer, P.E., per hour	\$ 180.00
Project Engineer, P.E., per hour	\$ 140.00
Staff Engineer, per hour	\$ 95.00

Technical And Support Staff

NDT Inspector (ASNT Level II)	\$ 105.00
NDT Inspector (ASNT Level III)	\$ 120.00
AWS Steel Inspector, per hour	\$ 95.00
Senior Inspector, SET, NICET Level IV, per hour	\$ 65.00
Engineering Technician, NICET Level III, per hour	\$ 60.00
Engineering Technician, NICET Level II, per hour	\$ 52.00
Engineering Technician, NICET Level I or ACI-1, per hour	\$ 41.00
Secretarial Service, per hour	\$ 41.00
Certified Letter	\$ 75.00
Vehicle Charge (within 25 miles radius), each	\$ 60.00
Mileage (for trips greater than 25 miles radius)	\$ 1.20

Soil And Earthwork Inspection Testing

Services of a technician to perform Density, In-Place, per hour	\$ 41.00
Nuclear Gauge/Trip	\$ 50.00
Services of a technician to perform plant inspection for stabilized sand, cement or lime stabilized base materials, per hour.	\$ 41.00
Optimum moisture/density relationship (Proctor/Curve)	
(a) Standard Proctor (ASTM D-698), each	\$ 145.00
(b) Modified Proctor (ASTM D-1557), each	\$ 170.00
Lime Stabilization	
(a) Lime Study Test (4 per Set), each	\$ 160.00
(b) Percent Solids of Lime slurry, each	\$ 45.00
(c) Sample Preparation charge, per hour	\$ 42.00

Soil Testing (Continued)

Atterberg Limits (ASTM D-4318), each	\$ 45.00
Moisture Content Only (ASTM D-2216), each	\$ 9.00
Sieve Analysis, To No. 200 Sieve (ASTM D-422), each	\$ 50.00
Percent Passing No. 200 Sieve (ASTM D C-117), each	\$ 50.00
Specific Gravity (ASTM D-854/D-204), each	\$ 45.00
Density and Moisture Content of Soil Sample, each	\$ 28.00
pH Test, each	\$ 25.00
Hydrometer Analysis (ASTM D-422), each	\$ 140.00
Organic Impurities Test,(ASTM C-40) each	\$ 40.00
Cement Stabilized Sand - Molding and Compression Test, set of 4	\$ 150.00
Permeability Test, Constant Head Method (ASTM D-2434), per test	\$ 180.00

Concrete Aggregates

Screen or Sieve Analysis (ASTM C-136), each	\$ 48.00
Specific Gravity (ASTM C-127 or C-128), each	\$ 48.00
Unit Weight (ASTM C-29), each	\$ 35.00
Absorption (ASTM C-127 or C-128), each	\$ 35.00
Finer than 200 mesh (ASTM C-117), each	\$ 50.00
Organic Impurities (ASTM C-40), each	\$ 45.00

Asphaltic Materials

Asphaltic Concrete Design, each	\$ 295.00
Mix Design Review (using previously determined aggregates properties and other design factors) Excluding Test Costs	\$ 180.00
Stability: Hveem (3 per set), (TEX-208F), set	\$ 120.00/set
Compacting (Molding) Specimens (TGC) (3 per set), (TEX-206F)	\$60.00/set
Bulk Density of Lab Molded or Field Specimen (Core) (3 Per Set), (TEX-207F)	\$ 50.00/set
Determining Asphalt Content by Ignition Oven (TEX-236F), each	\$ 180.00
Asphalt Coring (4" Dia Up to 6" Thickness) includes Personnel, Vehicle and Patching Holes, each	\$ 75.00
Additional Thickness over 6", per inch	\$ 9.00
Measuring Thickness of Asphalt Cores, each	\$ 10.00/ea
Sieve Analysis/Gradation (TEX- 200F), each	\$ 48.00/ea
Maximum Theoretical Specific Gravity (TEX-227F)	\$ 80.00/ea

A&R ENGINEERING and TESTING, INC, • Registration No. F-4123

323 Martin Street • Houston, TX 77018-3305 • 713-290-1912 • Fax: 713-290-9089

www.A-Rengineering.com

Cast-In-Place Concrete

Mix Design Review, each	\$ 180.00
Trial Batch Mix Design including slump, yield, air content, temperature with 5 molded specimens, cylinders or beams, per batch, test each specimen	\$ 250.00
Services of a technician with necessary equipment to perform concrete batch plant and/or concrete field inspection to including field slump, temperature, and air content tests and molding of required specimens, per hour	\$ 41.00
Concrete test cylinders, including "Hold" specimens, fabricated by A&R technician during a concrete field inspection, each	\$ 15.00
Concrete test beams, including "Hold" specimens, fabricated by A&R personnel for flexural tests (ASTM C-192), each	\$ 24.00
Services of an engineering technician to perform field inspection of drill piers, footings, elongations and grade beams, per hour	\$ 52.00
Concrete Cores (Min. 4), 1st 7" @ 4" diameter, each	\$ 90.00
Additional Inches for 4" diameter cores, per inch	\$ 9.00
Diamond Blade Sawing (Sq. Inches)	\$ 1.10
Length Measurement - Concrete Core, each	\$ 12.00
Compression Test - Concrete Core, each	\$ 30.00
Vehicle Charge (Box-Van)	\$250.00

Masonry Testing (Mortar, Grout, Prism)

Mortar Compressive Strength Test (ASTM C-109), each	\$ 22.00
Grout Compressive Strength Test, (ASTM C-1019), each	\$ 25.00
Technician Time for Sampling, per hour	\$ 41.00

General Notes:

1. Special tests and inspection (Asphalt, Brick, Steel, Welding) not contained herein will be quoted on specific request basis.
2. Trip Charge will be charged for each trip made by our technician including cancellations at the site with a minimum technician time of two (2) hours.
3. All services on an hourly basis will be charged at the applicable hourly rate, portal to portal from our laboratory, minimum technician time of **four (4)** hours will be billed for any and all field inspections trips, except sample pick up trips which will be billed on a minimum technician time of two (2) hours.
4. Overtime rate of 1.5 times the regular published hourly rate will be charged for all work over eight (8) hours per day on Monday through Friday for all hours worked on Saturday and for all hours worked between 8:00 pm through 6:00 am and 2.0 times regular rate for all hours on Sundays and Holidays.
5. Invoice will be submitted on a monthly basis, or upon job completion and are due and payable in net ten (10) days from the date of our invoice.
6. All prices and fees are subject to negotiation based upon the projects scope of work.

I:\construction\Fee Schedules\Fee Schedule 2017 Revised 12-29-16.wpd

A&R ENGINEERING and TESTING, INC. • Registration No. F-4123

323 Martin Street • Houston, TX 77018-3305 • 713-290-1912 • Fax: 713-290-9089

www.A-Engineering.com