AGREEMENT FOR ENGINEERING SERVICES

B112 Right-of-Way Verification

This Agreement is made and entered into in Deer Park, Harris County, Texas on the 7th day of December, 2016; by and between

The City of Deer Park, a Municipal Corporation in the State of Texas

And

ArborLeaf Engineering & Surveying, Inc., ENGINEER(s) duly licensed, and practicing under the laws of the State of Texas.

Said Agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the Engineer for engineering services hereinafter set forth in connection with the above-designated Project for the City of Deer Park.

DEER PARK retains ArborLeaf to perform engineering services related to perform ownership search, tie to adjacent properties, and analyze results to produce a right-of-way map of the BHCFCD 112-00 ditch from the CenterPoint Energy ROW to the HCFCD regional detention pond (see exhibit A) in return for consideration to be paid by DEER PARK under terms and conditions set forth below.

ARTICLE 1. SCOPE OF WORK

- 1.1 ENGINEER will provide engineering, design, consultation, project management, and other services as required to perform and complete the Scope of Work & Services specifically identified in Attachment A of this Agreement. The Services Scope of Work (the "Work") and the time schedules set forth in Attachment A are based on information provided by DEER PARK and ENGINEER. The schedule of milestones and deliverables are essential terms of this Agreement.
- 1.2 If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by DEER PARK, or if DEER PARK directs ENGINEER to change the original Scope of Work shown in Attachment A, a written amendment equitably adjusting the costs, performance time and/or terms and conditions, shall be executed by DEER PARK and ENGINEER.

ARTICLE 2. COMPENSATION

- 2.1 ENGINEER bills for its services on a time and materials basis using the Schedule of Rates and Terms entitled Estimated Level of Effort ("Schedule of Rates") attached as Attachment B of this Agreement. As requested, ENGINEER has provided an estimate of the fees for the Work amounting to \$18,645. ENGINEER will not exceed that estimate without prior approval from DEER PARK. ENGINEER will notify DEER PARK, for approval, of any proposed revisions to the Schedule of Rates and effective date thereof which shall not be less than thirty (30) days after such notice.
- 2.2 ENGINEER will submit monthly invoices for Services rendered, and DEER PARK will make payment within thirty (30) days of receipt of ENGINEER'S invoices. If DEER PARK objects to all or any portion of an invoice, it will notify ENGINEER of the same within fifteen (15) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice. Prices or rates quoted do not include state or local taxes.

ARTICLE 3. DEER PARK'S RESPONSIBILITIES

- 3.1 DEER PARK will designate in writing the person or persons with authority to act on DEER PARK's behalf on all matters concerning the work to be performed.
- 3.2 DEER PARK will furnish to ENGINEER all existing studies, reports, data and other information available to DEER PARK necessary for performance of the Work, authorize ENGINEER to obtain additional data as required, and furnish the services of others where necessary for the performance of the Work. ENGINEER will be entitled to use and rely upon all such information and services.
- 3.3 Where necessary to performance of the Work, DEER PARK shall arrange for ENGINEER to have access to any site or property.

ARTICLE 4. PERFORMANCE OF SERVICE

- 4.1 ENGINEER's services will be performed within the schedule and time period set forth in Attachment A.
- 4.2 ENGINEER shall perform the Work, and any additional services as may be required, for the development of the Project to completion.
- 4.3 If required, additional services will be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.

4.4 If any time period within or date by which any of ENGINEER's services are to be performed is exceeded for reasons outside of ENGINEER's reasonable control, all rates, measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.

ARTICLE 5. CONFIDENTIALITY

5.1 ENGINEER will hold confidential all information obtained from DEER PARK, not previously known by ENGINEER or in the public domain.

ARTICLE 6. STANDARD OF CARE & WARRANTY

- 6.1 Standard of Care. In performing services, ENGINEER agrees to exercise professional judgment, made on the basis of the information available to ENGINEER, and to perform its engineering services with the professional skill and care of competent design professionals practicing in the same or similar locale and under the same or similar circumstances and professional license. ENGINEER also agrees to perform its engineering services as expeditiously as is prudent considering this standard of care. This standard of care shall be judged as of the time and place the services are rendered, and not according to later standards.
- Warranty. If any failure to meet the foregoing standard of care Warranty appears during one year from the date of completion of the service and ENGINEER is promptly notified thereof in writing, ENGINEER will at its expense re-perform the nonconforming work.
- 6.3 The foregoing Warranty is the sole and express warranty obligation of ENGINEER and is provided in lieu of all other warranties, whether written, oral, implied or statutory, including any warranty of merchantability. Engineer does not warrant any products or services of others. ENGINEER, however, expressly acknowledges that these warranty obligations do not eliminate the applicability of the standard of care to all of its work and that the OWNER may still retain remedies against ENGINEER following the expiration of the warranty period in contract, tort, or otherwise as the law allows.

ARTICLE 7. INSURANCE

- 7.1 ENGINEER will procure and maintain insurance as required by law. At a minimum, ENGINEER will have the following coverage:
 - (1) Workers compensation and occupational disease insurance in statutory amounts.
 - (2) Employer's liability insurance in the amount of \$1,000,000.

- (3) Automobile liability in the amount of \$1,000,000.
- (4) Commercial General Liability insurance for bodily injury, death or loss of or damage to property of third persons in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate.
- (5) Professional errors and omissions insurance in the amount of \$1,000,000.
- 7.2 ENGINEER has provided a Statement of Insurance to DEER PARK demonstrating and reflecting that ENGINEER has procured and maintains insurance coverage in accordance with the requirements stated above. That Statement of Insurance is Attachment C of this Agreement.

ARTICLE 8. INDEMNITY

8.1 TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER SHALL INDEMNIFY, AND HOLD HARMLESS THE CITY OF DEER PARK, ITS OFFICERS, OFFICIALS, AGENTS, DIRECTORS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, OR OTHER HARM TO THE EXTENT SUCH BODILY INJURY, PROPERTY DAMAGE, OR HARM ARISES OUT OF OR IS OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER OR THE ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE INDEMNITOR EXERCISES CONTROL.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEER'S LIABILITY.

8.2 ENGINEER agrees to and shall contractually require its consultants and subcontractors of any tier to assume the same indemnification obligations to Indemnities as stated herein.

ARTICLE 9. OWNERSHIP OF DOCUMENTS

9.1 As long as DEER PARK is current in the payment of all undisputed invoices, all work product prepared by the ENGINEER pursuant to this Agreement, including, but not limited to, all Contract Documents, Plans and Specifications and any computer aided design, shall be

- the sole and exclusive property of DEER PARK, subject to the ENGINEER's reserved rights.
- 9.2 ENGINEER's technology, including without limitation customary techniques and details, skill, processes, knowledge, and computer software developed or acquired by ENGINEER or its Consultants to prepare and manipulate the data which comprises the instruments of services shall all be and remain the property of the ENGINEER.

ARTICLE 10. INDEPENDENT CONTRACTOR

10.1 The ENGINEER is an independent contractor and shall not be regarded as an employee or agent of the DEER PARK.

ARTICLE 11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

11.1 The ENGINEER shall observe all applicable provisions of the federal, state and local laws and regulations, including those relating to equal opportunity employment.

ARTICLE 12. SAFETY

- 12.1 DEER PARK shall inform the ENGINEER and its employees of any applicable site safety procedures and regulations known to DEER PARK as well as any special safety concerns or dangerous conditions at the site. The ENGINEER and its employees will be obligated to adhere to such procedures and regulations once notice has been given.
- 12.2 ENGINEER shall not have any responsibility for overall job safety at the site. If in ENGINEER's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, ENGINEER may immediately suspend performance until such safety standards can be attained. If within a reasonable time site operations or conditions are not brought into compliance with such safety standards, ENGINEER may in its discretion terminate its performance, in which event, DEER PARK shall pay for services and termination expenses as provided in Article 18.

ARTICLE 13. LITIGATION

13.1 At the request of DEER PARK, ENGINEER agrees to provide testimony and other evidence in any litigation, hearings or proceedings to which DEER PARK is or becomes a party in connection with the work performed under this Agreement, unless DEER PARK and the ENGINEER are adverse to one-another in any such litigation.

Any litigation arising out of this Agreement between DEER PARK and ENGINEER shall be heard by the state district courts of Harris County.

ARTICLE 14. NOTICE

14.1 All notices to either party by the other shall be deemed to have been sufficiently given when made in writing and delivered in person, by electronic mail, facsimile, certified mail or courier to the address of the respective party or to such other address as such party may designate.

ARTICLE 15. TERMINATION

15.1 The performance of work may be terminated or suspended by DEER PARK, for any reason. Such suspension or termination shall be subject to notice of DEER PARK's election to either suspend or terminate the Agreement fifteen (15) days' prior to the effective suspension or termination date. The Notice shall specify the extent to which performance of work is suspended or terminated and the date upon which such action shall become effective. In the event work is terminated or suspended by DEER PARK prior to the completion of services contemplated hereunder, ENGINEER shall be paid for (i) the services rendered to the date of termination or suspension and reasonable services provided to effectuate a professional and timely project termination or suspension.

ARTICLE 16. SEVERABILITY

16.1 If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ARTICLE 17. WAIVER

17.1 Any waiver by either party or any provision or condition of this Agreement shall not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition, unless such waiver is so expressed in writing and signed by the party to be bound.

ARTICLE 18. GOVERNING LAW

18.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Texas.

ARTICLE 19. CAPTIONS



19.1 The captions contained herein are intended solely for the convenience of reference and shall not define, limit or affect in any way the provisions, terms and conditions hereof or their interpretation.

ARTICLE 20. ENTIRE AGREEMENT

20.1 This Agreement, its articles, provision, terms, and attached Schedules represent the entire understanding and agreement between DEER PARK and ENGINEER and supersede any and all prior agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both parties.

This Agreement is effective on the last day signed.

ArborLeaf Engineering & Surveying, Inc.	The City of Deer Park
By	By
Name WALTER SMITH	Name
Title President	Title
Date 12/1/2016	Date

SCHEDULE A SCOPE OF WORK



ARBORLEAF ENGINEERING & SURVEYING, INC.

990 Village Square Drive, Suite P Tomball, TX 77375 281-655-0634

November 29, 2016

Mr. Bill Pedersen, PE City Engineer/Public Works Director City of Deer Park 710 East San Augustine Deer Park, Texas 77536

Re: Ditch B112-02 Improvements

Dear Mr. Pedersen,

Thank you for the opportunity to resubmit this proposal for professional services in regards to the above project. We have revised our previous proposal to reflect only the Right of Way Surveying Portion of the Work..

1. Arborleaf will perform ownership research on the existing right of way, and adjoiners, search for existing evidence of ownership (iron rods or pipes), tie adjacent properties, and analyze the results to produce a right of way map from the southern limit of the Centerpoint Energy Right of Way to the HCFCD Regional Detention Pond.

Our fee for this work is \$ 18,645.00

Thank you, again, for this opportunity to resubmit this proposal. You can call me at 713-550-4931 any time.

Sincerely,

Walter E. Smith, PE, RPLS

President

TBPLS #100543-00

TBPE #7705

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SCHEDULE B

COMPENSATION AND RATES

Position	Rate
RPLS	\$ 175
Survey Technician	\$ 110
CAD Technician	\$ 110
Survey Crew	\$ 185
Administration	\$ 85
Abstracting Services	Cost + 10%



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/01/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to

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PRODUCER	281-357-4477	301110		281-357-4380	CONTA NAME:	^{ст} Gretche	n Fagan			
Gretche	n Fagan Agency		_		CONTACT Gretchen Fagan PHONE [A/C, No. Ext): 281-357-4477 FAX (A/C, No): 281-357-4380					
407 E Main					(A/C, No.): 201-337-4477 (A/C, No.): 201-337-4380 E-MAIL ADDRESS: gretchen@gretcheninsure.com					
										NAIC #
	, TX 77375				INSURER A: Truck Insurance Exchange					21709
INSURED	281-655-0634				INSURER B: Farmers Insurance Exchange					21652
ArborLeaf Engineering & Surveying, Inc.					INSURER C: Mid Century Insurance Company 2168					
990 Village Square Dr., Ste. P				INSURER D : Farmers Texas County Mutual Insurance Co 24392						
Taraha all	TV 77075				INSURER E :					
COVERA	TX 77375	TIEIC	ATE	NUMBER:	INSURER F:					
					/E BEE	N ISSUED TO	THE INSURE	REVISION NUMBER:	JE DOI	ICV PERIOD
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				605892044		02/08/2016	02/08/2017	MED EXP (Any one person)	\$ 5,0	
<u> </u>								PERSONAL & ADV INJURY	\$ 2,000,000	
GEN'L	AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 4,000,000	
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	City of Deer Park						ESCRIBED POLICIES BE C. EREOF. NOTICE WILL F			
710 E. San Augustine				THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.						
Deer Park, TX 77536										
Ph: (281) 479-2394				AUTHORIZED REPRESENTATIVE						

Fx: (281) 478-7217



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/01/2016 THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER, THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). PRODUCER CONTACT NAME: Mercer Consumer, a service of PHONE (A/C, No) Mercer Health & Benefits Administration LLC **EMAIL** PO Box 8146 ADDRESS: Des Moines, IA 50306-8146 PRODUCER CUSTOMER ID: INSURER(S) AFFORDING COVERAGE NAIC# INSURED INSURER A: Beazley Insurance Company Inc 37540 Arborleaf Engineering & Surveying INSURER B Suite P INSURER C 990 Village Square Drive INSURER D: Tomball, TX 77375 INSURER E: INSURER F: **COVERAGES CERTIFICATE NUMBER:** REVISION NUMBER: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS ADDL SUBR **POLICY EFF** POLICY EXP TYPE OF INSURANCE POLICY NUMBER LIMITS (MM/DD/YYYY) GENERAL LIABILITY EACH OCCURRENCE \$ DAMAGE TO RENTED COMMERICAL GENERAL LIABILITY \$ PREMISES (Ea occurrence CLAIMS-MADE OCCUR MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ GEN'L AGGREGATE LIMIT APPLIES PER: PRODUCTS - COMP/OP AGG \$ POLICY PROJECT LOC AUTOMOBILE LIABILITY COMBINED SINGLE LIMIT \$ (Each Occurrence) ANY AUTO **BODILY INJURY** \$ ALL OWNED AUTOS **BODILY INJURY** SCHEDULED AUTOS \$ (Per accident) PROPERTY DAMAGE HIRED AUTOS \$ (Per accident) NON-OWNED AUTOS \$ \$ EACH OCCURRENCE UMBRELLA LIAB OCCUR \$ **EXCESS LIAB** CLAIMS-MADE AGGREGATE \$ DEDUCTIBLE \$ RETENTION \$ \$ WORKERS COMPENSATION Y/N WC STATU-ОТН-AND EMPLOYERS' LIABILITY TORY LIMITS ANY PROPRIETOR/PARTNER/EXECUTIVE E.L. EACH ACCIDENT \$ N/A OFFICER/MEMBER EXCLUDED? E.L. DISEASE - EA EMPLOYEE \$ (Mandatory In NH) If ves, describe under E.L. DISEASE - POLICY LIMIT \$ DÉSCRIPTION OF OPERATIONS below **ENGINEERS** LIMITS: PER CLAIM \$2,000,000 10/01/2017 V16DA0160301 10/01/2016 PROFESSIONAL LIABILITY INSURANCE AGGREGATE \$2,000,000 DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required) CLAIMS MADE POLICY **CERTIFICATE HOLDER** CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE City of Deer Park THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN 710 E. San Augustine ACCORDANCE WITH THE POLICY PROVISIONS. Deer Park, TX 77536 AUTHORIZED REPRESENTATIVE