

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

THIS IS AN AGREEMENT effective as of July 10, 2018 ("Effective Date") between The City of Deer Park ("Owner") and RPS Infrastructure, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Historic Bridge Removal on Battleground Golf Course ("Project").

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

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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: 90 days. 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. Per Attachment "A" the engineering services to assist the City of Deer Park to repair the Historic Bridge Truss members is a lump sum fee of \$42,000. All Bid and Construction Phase services will be paid on a time and material basis, in the amount Not-To-Exceed \$15,000.

## 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: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
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:  
\_\_\_\_\_  
\_\_\_\_\_

# ATTACHMENT "A"



*Formerly Klotz Associates*

1160 Dairy Ashford, Suite 500, Houston, Texas 77079  
T 281 589 7257 W [rpsgroup.com/usa](http://rpsgroup.com/usa)

June 18, 2018

Mr. James J. Stokes  
City Manager, City of Deer Park  
710 E. San Augustine  
Deer Park, Texas 77536

**Re: Proposal for Historic Bridge Removal on Battleground Golf Course in Deer Park**

Dear Mr. Stokes:

RPS Infrastructure, Inc. is pleased to present this proposal to provide assistance to remove the Historic Bridge on Battleground Golf Course in Deer Park. In 2012 Klotz Associates, Inc. developed bridge retrofit plans that replaced the deck and rail of the Historic Bridge. The remaining truss members of the original bridge are now fully supported by the bridge constructed in 2012. Since the new construction the original truss members have continued to deteriorate and now require significant structural repair to maintain the structure as outlined in the City's Acquisition Agreement with Coryell County.

Our understandings of the City of Deer Park's goals are listed below:

1. Take photographic inventory of each truss member through a series of site visits that will be limited to no more than three (3).
2. Determine the level of deterioration of each truss member and categorize as:
  - a. Minor – No repair required
  - b. Moderate – Member requires repair
  - c. Severe – Member requires replacement
3. Provide construction procedures and materials that will abide by the "in-kind" repair methods and maintain the original appearance of the structure as close as reasonably possible.
4. Prepare and submit construction plans, specifications, and cost estimate to the City.
5. Assist the City in pre-bid phase and provide construction phase services.

## **SCOPE OF BASIC SERVICES**

The proposed engineering services to assist the City of Deer Park to repair the Historic Bridge truss members is a lump sum fee of \$42,000, and can be completed within ninety (90) days after notice to proceed.





Mr. James J. Stokes  
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### **Project Coordination & Management**

RPS Infrastructure, Inc. will meet with the City of Deer Park to initiate the project, presumably at a Public Hearing. We will be available to meet face-to-face with the City or via phone conference throughout the duration of the project (as needed) to provide status reports and clarification. The Project Manager will be the primary point of contact for the project and will manage the scope, schedule, budget, progress reporting and invoicing throughout.

### **Research, Data Collection & Analysis**

RPS Infrastructure, Inc. will travel to the historic bridge on Battleground Golf Course and take photographic inventory of each truss member. The number of site visits will be limited to no more than three (3).

Each truss member will be examined by a structural engineer and determine the level of deterioration. The level of deterioration will be as follows:

- Minor – No repair required
- Moderate – Member requires repair
- Severe – Member requires replacement

All truss members will be tabulated based on the determined level of deterioration with associated photographs. A structural engineer will then determine an appropriate in-kind repair for each member to restore the members as closely as possible to their original condition.

### **PS&E Documents**

RPS Infrastructure, Inc. will prepare and submit construction plans, specifications, and cost estimate to the City for the proposed repair of the Pratt truss members. Upon approval RPS will prepare and submit bid documents for construction letting.

A structural engineer will oversee the development of construction plans to ensure the in-kind repair methods will be used when detailing construction methods and materials for each truss member. Each truss member will be highlighted and have an associated repair option. Truss members that do not require repair will not be highlighted within the construction plans to reduce complexity.

### **Quality Control & Quality Assurance**

As part of our quality control procedures, we will review reports and estimates for clarity and completeness and ensure that appropriate quality control procedures were followed. We have the benefit of being able to provide oversight and review as mentioned above by experienced engineers.





Formerly Klotz Associates

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### **Expenses**

The fee for Basic Services includes all expenses incurred during the performance of the above scope and include travel expenses, reproduction of the report for review and final submittals, and rental or purchase of OSHA required inspection safety equipment.

### **FEE PROPOSAL**

The engineering fee to complete these tasks will be on a lump sum basis and is based on the following breakdown:

Project Coordination & Management	\$2,000
Research, Data Collection & Analysis	\$10,000
PS&E Documents	\$27,500
Quality Control & Quality Assurance	\$2,000
Project Expenses	<u>\$500</u>
Grand Total:	\$42,000

### **BID & CONSTRUCTION PHASE SERVICES**

Upon final submittal of the PS&E documents the engineer will assist the City of Deer Park through the bid and construction of the project. All work associated with construction phase services will be performed in a timely manner such that the bidding and construction phase schedule is not impacted. All Bid and Construction Phase services will be paid on a time and material basis, in an amount Not-To-Exceed \$15,000.

### **Pre-Bid Phase**

RPS Infrastructure, Inc. will provide services to assist the City during the pre-bid phase that include Addendums to bid documents, providing answers to contractor questions, and attending a mandatory pre-bid meeting. Additionally, we will attend and participate in a pre-construction meeting and distribute meeting minutes.



Formerly Klotz Associates

Mr. James J. Stokes  
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### **General Construction Management**

As part of construction phase services, we will:

- Periodically observe the construction to verify work complies with contract, drawings and specifications
- Check compliance with approved submittals
- Review and count materials as required
- Inform the City of Deer Park of any major construction issues and facilitate resolution

### **Request for Information (RFI's)**

RPS Infrastructure, Inc. will provide and submit responses to RFI's, and provide drawing revisions as necessary.

### **As-Built**

We recommend the contractor keep As-Built drawings throughout construction that will be submitted to the Texas Historic Committee as part of the bridge's historic inventory. We will review the contractor's plan set at the project's completion.

### **ADDITIONAL SERVICES**

Additional services, if needed, will be considered outside of the scope of the estimated fee. RPS Infrastructure, Inc. will perform additional services based on payroll costs of salaries and wages times a factor for general overhead and profit of 2.5. Reimbursable expenses will be charged at Engineer's cost plus 15%. The Additional Services may include additional inspection, study, or analysis not included in Basic Services scope.

If you have any questions, please contact Jonathan Griffin, P.E. at (281) 589-7257.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Griffin", with a stylized flourish at the end.

Jonathan Griffin, PE  
Project Manager

JG:kn