

ENGINEERING SERVICES AGREEMENT

This Agreement is made and entered into effective as of the _____ day of _____, 20__ (the "Effective Date"), by and between the Coastal Water Authority, a conservation and reclamation district of the State of Texas, ("CWA") with principal offices located at 1801 Main Street, Suite 800, Houston, Texas 77002 and _____ (ENGINEER) a corporation organized in the State of _____ with principal offices located at _____,

CWA and (ENGINEER) are sometimes referred to herein collectively as the "Parties" or individually as a "Party". The Parties hereby agree as follows:

ARTICLE 1 **SCOPE OF SERVICES**

1.1 The scope of work includes _____.

1.2 Work Orders shall contain the schedule, price and payment terms applicable to the Services within the scope of such orders. Work Orders will refer to and be governed by and subject to the terms, conditions and other provisions of this Agreement and Work Orders shall become effective when an acknowledgment copy thereof is signed by a duly authorized officer of and returned to CWA. Services covered by any Work Order (and related and specifications, if any) may not be modified unless such modifications are first agreed to in writing by CWA and (ENGINEER).

1.3 Terms, conditions or other provisions contained in any Work Order that conflict with any terms, conditions or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the terms, conditions, or other provisions contained in such Work Orders shall remain in full force and effect.

1.4 Nothing herein shall obligate CWA to issue, or (ENGINEER) to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties from entering into agreements other than this Agreement for services or work. For example, but not by way of limitation, services or work may involve tasks, risks and responsibilities which the Parties may decide ought to be governed by an agreement other than or different from this Agreement, and nothing in this Agreement shall prevent the Parties from entering into such a different or other agreement.

ARTICLE 2 **TERM OF AGREEMENT**

2.1 This Agreement shall be effective for a term of _____ from the date first set forth above.

2.2 Notwithstanding the foregoing, this Agreement shall remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as the Services under the Work Orders have been completed; provided however, that, pursuant to Article 13, either Party shall have the right to terminate any Work Order for cause and CWA shall have the right to terminate any Work Order for convenience.

ARTICLE 3
COMPENSATION AND PAYMENT

3.1 CWA agrees to pay (ENGINEER), and (ENGINEER) agrees to accept, as full and complete compensation for services properly performed by (ENGINEER) hereunder, the rates and charges agreed upon for a specific Work Order. Attachment A, which is incorporated herein by reference, shall be used to negotiate the price of each Work Order issued hereunder in accordance with Attachment A.

3.2 Monthly invoices are due to CWA on the first Tuesday of each month, together with appropriate releases and waivers of lien in forms acceptable to CWA, covering all Services performed hereunder by (ENGINEER) during the preceding calendar month. (ENGINEER) shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount of payment requested for each such Work Order, (iii) brief descriptions of Services performed during the prior month for each such Work Order including, and (iv) the total payment requested by such invoice. CWA shall pay the amount it agrees to be due within thirty (30) days after receipt of such invoice. If CWA fails to make payment in full within 30 days of the date due for any undisputed billing, (ENGINEER) may, after giving 7 days' written notice to CWA, suspend services under the Work Order until paid in full, including interest. In the event of suspension of services, (ENGINEER) will have no liability to CWA for delays or damages caused by CWA because of such suspension.

3.3 CWA shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect CWA from loss or expected loss because of:

(a) services that are defective or not in compliance with this Agreement or the applicable Work Order or any failure of (ENGINEER) to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;

(b) third party suits, stop notices, claims or liens for which (ENGINEER) is responsible pursuant to this Agreement, including without limitation pursuant to any indemnification obligation hereunder, asserted or filed against any Indemnitee or any Indemnitee's property or any portion thereof;

(c) uninsured damage to any Indemnitee which results from (ENGINEER)'s failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by (ENGINEER) or any of its subcontractors, sub consultants or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or

(d) any failure of (ENGINEER) to pay any subcontractor, sub consultant or supplier of (ENGINEER) the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. (ENGINEER) will not include in its billings to CWA any amount in a subcontractor or supplier invoice which it has not paid and does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

3.4 All payments by CWA under this Agreement shall be made by electronic funds transfer (“EFT”). If CWA is unable to make one or more payments by EFT, (ENGINEER) agrees to accept payment by check or some other mutually agreeable method of payment.

3.5 (ENGINEER) is required to provide CWA with the information required to make payment by EFT. In the event that information necessary to make payment by EFT changes, (ENGINEER) is responsible for providing the updated information to CWA. CWA will endeavor to begin using the changed EFT information no later than 30 days after its receipt to the extent payment is made by EFT.

3.6 CWA will include sufficient information in its payment by EFT to identify this Agreement and the invoice for which payment is made. CWA may at its option provide such information in a voucher sent separately to a department or person in (ENGINEER)’s office designated by mutual agreement.

3.7 (ENGINEER) agrees to pay in full as soon as reasonably practicable, but in no event later than ten days working days following payment from CWA, all subcontractors, sub consultants and any other persons or entities supplying labor, materials or equipment in connection with Services that are owed payment by (ENGINEER) out of such payment made to (ENGINEER) by CWA.

ARTICLE 4

ACCESS TO SITES; PERMITS; AVAILABILITY OF FUNDING

4.1 CWA shall grant or cause to be granted to (ENGINEER) access to all sites to the extent necessary for the performance of Services under this Agreement.

4.2 Unless otherwise specified in Work Orders, (ENGINEER) will assist CWA in securing all necessary approvals, permits, licenses, easements and consents necessary for the performance of Services.

4.3 CWA shall ensure that sufficient funds are available to pay (ENGINEER) for Services ordered under this Agreement. (ENGINEER) understands that appropriations for Services pursuant to Work Orders under this Agreement will sometimes be made in stages by CWA. (ENGINEER) also understands that such Services will be performed and expenses incurred by (ENGINEER) and payments will be made to (ENGINEER) under the direction of and subject to the approval of the Executive Director, the Board of Directors, or other duly authorized representative of CWA.

ARTICLE 5

STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; MWD BE REQUIREMENTS; FURNISHING OF INFORMATION TO PUBLIC WORKS DIRECTOR; REVIEW AND APPROVAL BY CITY OF HOUSTON

5.1 (ENGINEER) shall supervise and direct the Services, using all reasonable skill and attention, in a good and workmanlike manner and in the most expeditious and economical manner consistent with the interests of CWA, shall exercise the degree of care, skill and diligence in the performance of the Services in accordance with and consistent with industry standards

for similar circumstances, shall utilize all reasonable skill, efforts and judgment in furthering the interests of CWA, and shall furnish efficient business administration and supervision in connection with Services and this Agreement equal to other members of (ENGINEER)'s profession practicing under similar circumstances ((ENGINEER)'s "Standard of Care"). Except as expressly set forth in this Agreement, (ENGINEER) makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Services.

5.2 Consistent with its Standard of Care, (ENGINEER) will keep CWA apprised of the status of Services, will coordinate its activities with CWA, and accommodate other activities of CWA at sites that Services impact. (ENGINEER) shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

5.3 (ENGINEER) shall be responsible for its own activities at sites including the safety of its employees, and that of its sub consultants and subcontractors but shall not assume control of or responsibility for the site. Construction contractors of CWA, other than (ENGINEER) have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all parties, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with CWA.

5.4 To the extent (ENGINEER) provides to CWA any estimate of costs associated with construction, and except to the extent that (ENGINEER) is providing construction services, it is recognized by the Parties that neither (ENGINEER) nor CWA has control over the cost of labor, materials or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, (ENGINEER) cannot and does not warrant or represent that bids or negotiated prices will not vary from CWA's budget for the project or from any estimate of cost of work or evaluation prepared or agreed to by (ENGINEER).

5.5 With respect to providing Services hereunder, (ENGINEER) agrees to meet participation requirements of 24% by firms certified either by the State of Texas as a Historically Underutilized Business or by the City of Houston as a Minority Business Enterprise, a Woman Owned Business Enterprise, or a Disadvantaged Business Enterprise.

5.6 If requested by CWA, (ENGINEER) shall furnish to the Public Works Director of the City of Houston copies of all estimates and progress reports related to construction as such estimates and reports are prepared and become available.

5.7 (ENGINEER) acknowledges and agrees that projects of CWA may be subject to review and approval by the City of Houston. Accordingly, as and when requested by CWA, (ENGINEER) shall submit such information and cooperate with the City of Houston to the extent necessary undergo any such review or obtain any such approval.

5.8 (ENGINEER) does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If CWA reuses any Work Product without (ENGINEER)'s

specific written verification or adaptation, such reuse will be at the risk of CWA, without liability to (ENGINEER).

ARTICLE 6 **COST RECORDS**

6.1 (ENGINEER) shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by (ENGINEER) under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, (ENGINEER) shall maintain records of direct costs for which CWA is charged. CWA shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. Unless greater rights are afforded by applicable law or CWA is required by agreement with the City of Houston to furnish more extensive access to the books and records of its contractors or consultants, CWA's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third-party charges only. Except to the extent audit rights are granted to CWA by applicable law or CWA is required by agreement with the City of Houston to furnish access to books and records of its contractors or consultants, CWA shall have no audit rights for lump sum Work Orders.

ARTICLE 7 **OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY**

7.1 All drawings, schematics, specifications, computer software (including source code and object code), all other deliverables and documents, and all Intellectual Property created or prepared by the (ENGINEER) or its sub consultants, subcontractors, or suppliers in connection with Services or any project of CWA are and shall remain CWA's property upon creation (collectively, "Work Product") provided, however, that Work Product shall not include Intellectual Property or other proprietary information of (ENGINEER), its sub consultants, subcontractors and suppliers that was created or prepared before the Effective Date ("Contractor Proprietary Information"). To this end, (ENGINEER) agrees to and does hereby assign, grant, transfer and convey to the CWA, its successors and assigns, (ENGINEER) entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registrations. (ENGINEER) confirms that CWA and its successors and assigns shall own (ENGINEER) right, title and interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, the (ENGINEER) hereby grants CWA a fully paid-up, royalty free, perpetual, assignable, transferable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties Contractor Proprietary Information in connection with CWA's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement and modification of projects of CWA or otherwise in connection with property or projects in which CWA has an interest (whether by CWA or a third party). (ENGINEER) shall obtain assignments, confirmations and licenses substantially similar to the provisions of this paragraph from all of its sub consultants, subcontractors and suppliers. Work Product is to be used by (ENGINEER) only with respect to the project in connection with which such Work Product

was created and is not to be used on any other project. (ENGINEER) and its sub consultants, subcontractors and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements or for other purposes in connection with Services is not to be construed as publication in derogation of the CWA's copyright or other reserved rights. (ENGINEER) shall deliver all copies of the Work Product or tangible embodiments thereof to CWA upon the earliest to occur of CWA's request, completion of Services in connection with which Work Product was created or prepared, or termination of this Agreement. CWA acknowledges that the documents provided by (ENGINEER) pursuant to this Agreement are project-specific and (ENGINEER) does not intend such documents to be re-used on any other project without (ENGINEER) involvement in such project, unless expressly set forth in such documents. Any re-use of such documents on another project without (ENGINEER)'s involvement and not expressly set forth in such documents will be without liability to (ENGINEER). "Intellectual Property" means any and all of the following in any jurisdiction throughout the world: (a) patents and patent applications, together with all reissues, continuations, continuations in part, divisionals, extensions and reexaminations in connection therewith and utility models; (b) trademarks, service marks, trade dress, logos, slogans, trade names and Internet domain names and all applications, registrations and renewals in connection therewith, and all goodwill associated with any of the foregoing; (c) copyrights, database rights, architectural works (as defined by 17 U.S.C. 101), and all applications, registrations and renewals in connection therewith; (d) all moral rights or similar rights, and (e) trade secrets and confidential or proprietary information, including confidential or proprietary data, ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes, and other knowhow, whether or not patentable or capable of being registered.

7.2 (ENGINEER) agrees that all information provided by CWA in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used or disclosed by (ENGINEER) without the prior written consent of CWA, except as may be necessary for (ENGINEER) to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (1) was at the time of receipt by (ENGINEER) otherwise known by (ENGINEER) by proper means;
- (2) Has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to (ENGINEER);
- (3) subsequently is developed independently by (ENGINEER), by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of (ENGINEER) being a Party to this Agreement;
- (4) becomes known or available to (ENGINEER) from a source other than CWA and without breach of this Agreement by (ENGINEER) or any other impropriety of (ENGINEER);

- (5) enters the public domain without breach of the Agreement by or other impropriety of (ENGINEER);
- (6) becomes available to (ENGINEER) by inspection or analysis of products available in the market;
- (7) is disclosed with the prior written approval of CWA;
- (8) was exchanged between CWA and (ENGINEER) and five years have subsequently elapsed since such exchange; or
- (9) is disclosed to comply with the Texas Public Information Act or in response to a court order or to comply with the requirement of a government agency.

7.3 (ENGINEER) shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as (ENGINEER) normally takes to preserve and safeguard its own proprietary or confidential information, but in no event less than a commercially reasonable degree of care.

7.4 (ENGINEER) will advise CWA of any patents or proprietary rights and any royalties, licenses, or other charges which (ENGINEER) knows or should know in the exercise of its Standard of Care impacts any design provided by (ENGINEER) in connection with any Services, and obtain CWA's prior written approval before proceeding with such Services. (ENGINEER) shall not perform patent searches or evaluation of claims, but will assist CWA in this regard if requested, on the basis set forth herein. There will be no charge for the licenses to (ENGINEER)'s existing patents as set forth in Section 7.1 above.

ARTICLE 8

INDEPENDENT CONTRACTOR RELATIONSHIP

8.1 In the performance of Services hereunder, (ENGINEER) shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. (ENGINEER) shall not be considered a partner, affiliate, agent or employee of CWA and shall in no way have any authority to bind CWA to any obligation.

ARTICLE 9

WARRANTY PERIOD; GUARANTEES

9.1 If within a period of one (1) year following completion of Services under a Work Order, it is discovered that such Services were not performed in accordance with (ENGINEER)'s Standard of Care, (ENGINEER) shall be obligated to re-perform such Services at its own expense. If (ENGINEER) is unable to re-perform such Services as expediently or in the manner required for CWA's needs, (ENGINEER) agrees to pay CWA's reasonable costs associated with having another contractor or engineer perform such corrective services. The obligations of (ENGINEER) under this Paragraph 9.1 are in addition to other rights and remedies of CWA available to it pursuant to this Agreement or applicable law.

9.2 (ENGINEER) agrees to assign to CWA the warranty or guarantee of any manufacturer or supplier of items of machinery, equipment, materials or products provided by (ENGINEER) hereunder and cooperate and assist CWA in CWA's enforcement thereof. (ENGINEER)'s responsibility with respect thereto is limited to such assignment, cooperation and assistance.

9.3 THE REPRESENTATIONS AND WARRANTIES OF (ENGINEER) UNDER THIS AGREEMENT AND WORK ORDERS ARE MADE IN LIEU OF ANY OTHER WARRANTIES OR GUARANTEES AND (ENGINEER) MAKES NO OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND (ENGINEER) SHALL HAVE NO LIABILITY TO CWA BASED UPON ANY THEORY OF LIABILITY THAT ANY SUCH OTHER WARRANTY WAS MADE OR BREACHED.

ARTICLE 10

INDEMNIFICATION BY (ENGINEER)

10.1 To the maximum extent allowed by law, (ENGINEER) shall defend, indemnify and hold harmless CWA and its board, directors, officers, employees, and the City of Houston and its officers, and employees (collectively, the "Indemnitees"), from and against any and all claims, losses, damages, demands, suits, causes of action, settlements, liabilities, costs, fines, judgments and expenses (including, without limitation, reasonable and necessary court costs, experts' fees and attorneys' fees) (collectively, "Losses"), whether arising in equity, at common law, or by statute, including without limitation the Texas Deceptive Trade Practices Act (as amended) or similar statute of other jurisdictions, or under the law of contracts, torts (including, without limitation, negligence and strict liability without regard to fault) or property, of every kind or character (including, without limitation, claims for property damage, personal injury (including without limitation emotional distress), and economic loss), arising in favor of or brought by any of (ENGINEER)'s employees, agents, sub consultants, subcontractors, suppliers or representatives, or by any governmental agency or by any other third party, based upon, in connection with, relating to or arising out of violations of the law, breach of this Agreement, or (ENGINEER)'s negligent acts, errors or omissions (or those of any of its subcontractors, sub consultants or suppliers or any of its or their respective employees or any party for whom any may be legally liable) under this Agreement or any Work Order, including without limitation any failure to pay taxes, failure to comply with any applicable law, or any failure by (ENGINEER) to pay any sub consultant, subcontractor or supplier, and EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEE'S CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT; provided, however, that (ENGINEER)'s obligation of indemnification under this Article 10 SHALL NOT extend to the percentage of any third party claimant's damages caused by any Indemnitee's own negligence. (ENGINEER) The obligations of (ENGINEER) under this Article 10 shall apply regardless of the amount of insurance coverage provided pursuant to this Agreement, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of damages, compensation, or benefits payable by or for (ENGINEER) or any employee of it or its subcontractors, sub consultants or suppliers, and shall not be limited by any insurance carried or provided pursuant to this Agreement or otherwise.

ARTICLE 11
LIMITATION OF LIABILITY

11.1 This article shall apply notwithstanding any other provision of this Agreement.

11.2 Neither Party hereto, nor its affiliates, its subcontractors, or vendors of any tier, shall be liable to the other Party or its affiliates for any loss of profit, loss of revenue, loss of use or for any other indirect, consequential or special damages, EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A PARTY, WHETHER ACTIVE OR PASSIVE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

11.3 CWA AGREES THAT IN CONSIDERATION OF THE FEES AND THE APPROPRIATE LEVEL OF RISK THAT SHOULD BE ACCORDINGLY TAKEN, (ENGINEER) LIABILITY TO CWA DUE TO (ENGINEER) PROFESSIONAL NEGLIGENT ACTS, ERRORS, OR OMISSIONS (WHETHER SOLE OR CONCURRENT) SHALL BE LIMITED TO THE LESSER AMOUNT OF THE DOLLAR VALUE OF THE WORK ORDER UNDER WHICH SERVICES ARE BEING PERFORMED OR \$_____ IN THE AGGREGATE FOR EACH WORK ORDER.

11.4 ANY LIMITATION ON OR EXCULPATION FROM LIABILITY AFFORDED (ENGINEER) OR CWA BY THIS AGREEMENT SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED IN OR ON CONTRACT, TORT (INCLUDING NEGLIGENCE, WHETHER SOLE OR CONCURRENT, ACTIVE OR PASSIVE), STATUTE, STRICT LIABILITY OR OTHERWISE, AND SHALL LIKEWISE LIMIT THE LIABILITY OF (ENGINEER) AND CWA AND EACH OF THEIR RESPECTIVE BOARDS, OFFICERS, AGENTS AND EMPLOYEES. For purposes of this Article an "affiliate" of a Party includes any parent, subsidiary or affiliated corporation, partnership or other legal entity, and its and their officers, agents, employees and insurers.

11.5 Except to the extent expressly provided in this Agreement, there are no third-party beneficiaries of this Agreement and no third party may rely upon any obligation herein or upon the findings of any report produced hereby. Further, except to the extent expressly provided in this Agreement, this Agreement does not create or confer any legal claim or cause of action in favor of any party not a signatory to this Agreement and the obligations and legal duties imposed on any party by this Agreement are owed exclusively to the other party or parties and are not owed to any party not a signatory to this Agreement.

ARTICLE 12
INSURANCE

12.1 *General Requirements.* (ENGINEER) shall, at all times during the performance of Services pursuant to Work Orders issued under this Agreement and through the expiration of the last warranty period required by Paragraph 9.1 of this Agreement, provide and require all subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas which coverage will protect (ENGINEER) from claims set forth below which may arise out of or result from the (ENGINEER)'s negligent operations under this Agreement and for which (ENGINEER) may be legally liable, whether such operations are by

(ENGINEER) or a subcontractor of (ENGINEER) or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and meeting the requirements set forth in this Article 12.

Such insurance is to be provided at the sole cost of (ENGINEER) and all subcontractors. In the event any requirement of this Article 12 is less stringent upon (ENGINEER) or its subcontractors than those which are required pursuant to any agreement between the City of Houston, Texas and CWA, then (ENGINEER) agrees to comply and to cause its subcontractors to comply with and cause compliance with any more stringent requirements set forth therein. In the event that the requirements of Article 12 change after the Agreement has been executed, (ENGINEER) may submit any related reasonable expenses to CWA for review and reimbursement, subject to the revised terms. The term “subcontractor” for the purposes of this Article 12 shall include subcontractors and sub consultants of any tier.

(a) **Kinds of Claims:**

(1) Claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts which are applicable to (ENGINEER)’s Services to be performed;

(2) claims for damages because of bodily injury, occupational sickness or disease, or death of (ENGINEER)’s employees;

(3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the (ENGINEER)’s employees;

(4) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by (ENGINEER), or (ii) by another person;

(5) claims for damages, other than to (ENGINEER)’s work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

(7) claims involving contractual liability insurance applicable to the (ENGINEER)’s indemnification obligations under this Agreement; and

(8) if (ENGINEER) is performing construction services, claims involving or resulting from losses to (ENGINEER)’s work itself and to all equipment and property of (ENGINEER) and all persons involved in the work, regardless of whether kept on site or off-site.

*Aggregate limits are per 12-month policy period unless otherwise indicated; defense costs shall be excluded from limits of liability of each policy.

(c) All required insurance shall be maintained with responsible insurance carriers and lawfully authorized to issue insurance of the types and amounts set forth in this Article 12 and having a Best's Financial Strength Rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.

(d) With respect to all policies required in this Article 12, as soon as practicable upon execution of this Agreement, (ENGINEER) shall deposit with CWA true and correct certificates thereof, bearing notations or accompanied by other evidence satisfactory to CWA of the requirements of this Article 12. Thereafter, certification of premium payments shall be deposited with CWA not less than fifteen (15) days before the expiration dates of the expiring policies or reduction of the stated dollar coverage of the face of the policy.

(e) All policies of insurance and certificates issued for this Article 12, with the exception of Professional Liability and Workers' Compensation Insurance, shall name the Indemnitees as additional insureds for and to the extent of liabilities assumed under this Agreement.

(f) All insurance except professional liability insurance required pursuant to this Article 12 shall provide for waivers of all subrogation rights against the Indemnitees.

(g) Excepting professional liability and workers' compensation, all insurance required pursuant to this Article 12 shall be primary to the extent of liabilities assumed under this Agreement in respect of any insurance maintained by CWA or the City of Houston covering the same risk.

(h) If any policy required to be purchased pursuant to this Article 12 is subject to a deductible, self-insured retention or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible, self-insured retention or similar self-insurance mechanism shall be the sole responsibility of (ENGINEER) in the event of any loss and (ENGINEER) hereby waives any claim therefore against the Indemnitees.

(i) Excepting professional liability, (ENGINEER) hereby waives all claims it may have against the Indemnitees to the extent any of such claims are covered by insurance required to be furnished by (ENGINEER) or its subcontractors under this Agreement, and **EVEN IF SUCH CLAIMS ARISE OUT OF, RELATE TO OR ARE BASED UPON ANY INDEMNITEE'S OWN NEGLIGENCE, BREACH OF CONTRACT, VIOLATION OF STATUTE OR OTHER FAULT.**

(j) (ENGINEER) shall require and cause its subcontractors to purchase and maintain the insurance policies set forth in Paragraph 12.1(a) above with limits of liability commensurate with the amount of each such subcontract agreement, but in no case less than \$1,000,000 per occurrence. (ENGINEER) shall provide copies of insurance certificates for all such insurance to CWA and the Public Works Director.

(k) If (ENGINEER) fails to procure or to maintain in force the insurance required by this Article 12, CWA may secure such insurance and the costs thereof shall be

borne by (ENGINEER). (ENGINEER) shall reimburse CWA the cost of such insurance plus five percent (5%) administrative charge within ten (10) days after billing by CWA. Any sum remaining unpaid fifteen (15) days after billing by CWA shall bear interest at the rate of twelve percent (12%) per annum until paid by (ENGINEER). (ENGINEER) shall defend, indemnify and hold harmless the Indemnitees from and against any and all losses, claims, damages and expenses (including, without limitation, court costs, costs of defense and attorney's fees), that any Indemnitee may incur as a result of the (ENGINEER)'s failure to obtain or cause to be obtained the specific endorsements or insurance required pursuant to this Agreement. Failure of any Indemnitee to identify any deficiency in the insurance forms provided shall not be construed as a waiver of the (ENGINEER)'s obligation to maintain such insurance and to cause such insurance to be maintained.

(l) (ENGINEER)'s compliance with the provisions of this Article 12 shall not be deemed to constitute a limitation of (ENGINEER)'s liability with respect to claims covered by insurance provided pursuant to this Article 12 or in any way limit, modify or otherwise affect (ENGINEER)'s obligations under this Agreement or otherwise. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for (ENGINEER) or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

(m) If requested by CWA, (ENGINEER) shall furnish or shall cause to be furnished any such other insurance or limits as CWA may reasonably deem necessary for any Work Order or Orders and the cost thereof shall be charged to CWA by appropriate modification of any such order(s).

(n) Unless CWA gives its prior written consent, partial occupancy or use of any improvement constructed by (ENGINEER) shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. (ENGINEER) shall obtain consent of the insurance company or companies and shall not take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

12.2 Insurance Requirements.

At all times during the performance of services pursuant to the master contract and each work order issued and through the expiration of the last work order, respondent shall provide and require all subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas, at the sole cost of respondent and all subcontractors. The limits of liability on such policies shall be as follows:

<u>Kinds of Insurance</u>	<u>Limits of Liability</u>
A. Workers' Compensation Texas Operations Employer's Liability	Statutory
B. Employer's Liability	Accident \$ _____ Each Accident Disease \$ _____ Each Employee Disease \$ _____ Policy Limit
C. Commercial General Liability Including, but not limited to	\$ _____ General Aggregate \$ _____ Products/Completed

1. premises/operations 2. independent contractors' protective 3. products and completed operations 4. personal injury liability with employment exclusion deleted 5. contractual 6. owned, non-owned and hired motor vehicles	Operations Aggregate \$ _____ Each Occurrence \$ _____ Personal and Advertising Injury \$ _____ Fire Damage Liability
D. Professional Liability	\$ _____ per claim and in the aggregate on a claims made basis covering errors and omissions of respondent and its subcontractors
E. Business Automobile Liability including All owned Hired & Non-owned Automobiles	\$ _____ Combined Single Limit Per Occurrence
F. Umbrella Liability	\$ _____ Per Occurrence
	\$ _____ Aggregate

*Aggregate limits are per 12-month policy period unless otherwise indicated.

ARTICLE 13

CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE; UNFORESEEN SITE CONDITIONS

13.1 CWA may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. In the event any such change, through no fault of (ENGINEER), shall impact (ENGINEER)'s compensation or schedule, then (a) such changes shall be authorized by written change order issued by CWA and accepted by (ENGINEER) and (b) an equitable adjustment shall be made to the Work Order in writing duly executed by both parties, to reflect the change in compensation and schedule.

13.2 CWA may for convenience terminate this Agreement, any Work Order issued under this Agreement, or (ENGINEER)'s right to perform Services under this Agreement or any Work Order by at any time giving thirty (30) days written notice of such termination. In such event, CWA shall have the right but not the obligation to assume all obligations, commitments, and claims that (ENGINEER) may have in good faith undertaken or incurred in connection with the Services terminated, and CWA shall pay (ENGINEER) for Services properly performed to date of termination and for reasonable costs of closing out such Services. Upon termination, (ENGINEER) shall invoice CWA for all services performed by (ENGINEER) prior to the time of termination which have not previously been compensated. Payment of the final invoice shall be due and payable within thirty (30) days after receipt by CWA.

13.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that CWA terminates this Agreement or any Work Order for cause, (ENGINEER) shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to the CWA's right to offset all damages and costs associated with finally completing such Services.

13.4 (ENGINEER) shall promptly, and before conditions are disturbed, give notice to CWA (i) of surface, subsurface or latent physical conditions at the site which differ materially

from those indicated for a Work Order, (ii) of physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in Services of the character provided for a Work Order, or (iii) of any other unforeseen circumstance which may have an impact on the cost or schedule of performance of a Work Order. CWA shall investigate the conditions or circumstances promptly upon receiving (ENGINEER)'s notice of such conditions. If the conditions or circumstances do differ materially and cause an increase in (i) (ENGINEER)'s cost of the Services and/or (ii) (ENGINEER)'s time of performance, an equitable adjustment to the impacted Work Order shall be made.

ARTICLE 14 **FORCE MAJEURE**

14.1 Any delay in performance or non-performance of any obligation of (ENGINEER) contained herein shall be excused to the extent such failure or non-performance is caused by Force Majeure. "Force Majeure" includes fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communications systems, sabotage, terrorism or judicial restraint, but only to the extent such event (I) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by (ENGINEER) and (ii) prevents the performance of Services.

14.2 If (ENGINEER) is affected by Force Majeure, (ENGINEER) shall promptly provide notice to CWA, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within three business days after the end of the effects of the Force Majeure on performance and the end of the restrictions on (ENGINEER)'s ability to communicate with CWA. (ENGINEER) shall use its commercially reasonable efforts to remedy the interruption or delay if it is reasonably capable of being remedied.

ARTICLE 15 **ASSIGNMENT AND SUBCONTRACTING**

15.1 No right or interest in this Agreement or any Work Order shall be assigned by (ENGINEER) or CWA without the prior written consent of the other Party.

15.2 For Work Orders under which construction management - at risk services are being provided, (ENGINEER) may subcontract portions of the work without obtaining consent from CWA. For all other Work Orders, prior to commencement of any major part of the work or services to be provided under any Work Order with respect to which (ENGINEER) has elected to subcontract, (ENGINEER) will inform CWA of the identity of the particular subcontractor (ENGINEER) intends to employ for the performance of such major part of the work or services. CWA shall have the right to disallow (ENGINEER)'s employment of any particular subcontractor, provided that any reasonable additional costs incurred by (ENGINEER) as a result of such disallowance shall be borne by CWA and provided that CWA gives written notice of its disallowance of the subcontractor.

ARTICLE 16
SEVERABILITY

16.1 If any provision of this Agreement or any Work Order or any portion of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect.

ARTICLE 17
ENTIRE AGREEMENT

17.1 This Agreement and Work Orders issued under it contain the full and complete understanding of the Parties pertaining their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties.

ARTICLE 18
ARTICLE 18- GOVERNING LAW

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles.

ARTICLE 19
DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to the implementation of or performance of this Agreement or any Work Order which CWA and (ENGINEER) have been unable to resolve within thirty (30) days after such dispute arises, a senior representative (ENGINEER) shall meet with the Executive Director of CWA at a mutually agreed upon time and place not later than forty-five (45) days after such dispute arises to attempt to resolve such dispute. In the event such representatives are unable to resolve any such dispute within fifteen (15) days after such meeting, either Party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in construction, engineering, and/or public works operations. The mediation shall be conducted within thirty (30) days of the selection or appointment of the mediator, as applicable. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held at a mutually agreeable location in Houston, Texas. If the Parties are unable to agree upon a location, the mediation shall be held at the offices of the American Arbitration Association in Houston, Texas.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

Coastal Water Authority

Name:

Title:

(ENGINEER)

Name:

Title:

ATTACHMENT A

WORK ORDER NO. _____

This "Work Order" is issued subject to and is governed by that certain Engineering Services Agreement (the "Agreement") between Coastal Water Authority ("CWA") and ("ENGINEER") effective _____, 20___. Unless the context clearly dictates otherwise, capitalized items used herein and not defined herein shall have the meanings ascribed to such terms in the Agreement.

Work Order Date: _____

"Notice to Proceed" Effective Date of this "Work Order": _____

Method of Payment: Lump Sum Basis Upon Completion

Compensation Amount: \$ _____ ("Not to Exceed")

Source of Funding: _____

Location of Services: _____

Description of Services:

The services to be performed by (ENGINEER) and requested by CWA are included in the attached proposal (Exhibit A).

The costs for the aforementioned services shall not exceed the Compensation Amount without the prior written consent of CWA. CWA reserves the right to employ other engineers for engineering services in connection with the Water Conveyance System, or for other related or unrelated projects of CWA.

Agreed to by:

Coastal Water Authority

(Engineer)

By: _____
Name:
Title:

By: _____
Name:
Title: