

CONSULTING ENGINEERS CONTRACT

WHEREAS, this contract shall be administered on behalf of the **City** by its **City Engineer** or his duly authorized representative. The **Engineer** shall fully comply with any and all instructions from said **City Engineer**.

AGREEMENT

NOW, THEREFORE, the **City** and the **Engineer**, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

The **City** agrees to retain the **Engineer**, and the **Engineer** agrees to provide Services in connection with the Project as defined herein, and for having rendered such Services the **City** agrees to pay to the **Engineer** fee for these Services as mutually agreed. All Services under this Contract shall be performed under the direct supervision of the **City Engineer**.

1. Scope of Services.

- A. Basic Services: The work tasks and activities to be performed and deliverable to be provided by the **Engineer** shall be in accordance with Attachment A, Scope of Services, as mutually agreed to by the **City** and the **Engineer** in accordance with the provisions of this Contract.
- B. Additional Services Not Included In Basic Services: When mutually agreed to in writing by the **City** and the **Engineer**, the Additional Services shall be provided by the **Engineer**. These Additional Services are not included as a part of Basic Services and shall be paid for by the **City** in addition to payment for Basic Services. Should it be determined that one or more of the requirements of this Contract conflict with the requirements of the Scope of Services, including modifications to the Scope of Services or any attachments to this contract; the requirement of the Contract shall govern.

2. Progress Schedule. Within ten (10) days after receiving Notice to Proceed (NTP) the **Engineer** shall submit to the **City** a Schedule of Services consisting of a listing of the major Project tasks, the estimated consultant hours required to perform the tasks, the percentage of the Contract budget estimated to be allocated to each task and a bar chart schedule showing task beginning and completion dates. Significant milestones for the Project shall be identified.

3. Compensation.

- A. Basic Services Fee: The **Engineer** shall be paid a fee for Basic Services under this Contract pursuant to the Fee Schedule described in Attachment A, Scope of Services. Basic Services Part I Fee shall not exceed the lump sum of dollars (\$100,972.00) provided, however, that modifications to the Basic Services Part I, or other conditions defined herein may necessitate a change of Fee which shall be reduced to writing and approved by the City or its designee.
- B. Invoices: The **Engineer** shall submit invoices at not less than thirty (30) calendar days for Basic Services on or before the twenty fifth (25th) calendar day of the month, or the preceding business day if the twenty fifth occurs on a weekend and/or observed

holiday. Payment shall be based on the invoices submitted to the **City**, provided that Services completed as indicated in the Design Progress Reports approved by the **City** equals or exceeds the increment percentage requested on the **Engineer's** invoices. **Engineer's** invoices to **City** shall provide complete information and documentation to substantiate **Engineer's** charges and shall be in a form to be specified by the **City Engineer**. Should additional documentation be requested by the **City Engineer** the **Engineer** shall comply promptly with such request.

- C. Payments: All payments to **Engineer** shall be made on the basis of the invoices submitted by the **Engineer** and approved by the **City**. Following approval of invoices, **City** shall endeavor to pay **Engineer** promptly, however, under no circumstances shall **Engineer** be entitled to receive interest on amounts due. The **City**, in compliance with Texas State law, shall process a maximum of one payment to the **Engineer** per month. **City** reserves the right to correct any error that may be discovered in any invoice whether paid to the **Engineer** or not, and to withhold the funds requested by the **Engineer** relative to the error.

4. **Fee Increases.** Any other provision in this Contract notwithstanding, it is specifically understood and agreed that the **Engineer** shall not be authorized to undertake any Services pursuant to this Contract requiring the payment of any fee, expense or reimbursement in addition to the fees stipulated in Article 3 of this Contract, without having first obtained specific written authorization from the **City**. The written authorization for additional Services shall be in the form of a Modification to the Scope of Services approved by the City Engineer and/or the City Council, if required.
5. **Modifications to the Scope of Services.** Either the **Engineer** or the **City Engineer** may initiate a written request for a Modification to the Scope of Services when in the opinion of the requesting Party, the needs and conditions of the Project warrant a modification. Upon the receipt of a request by either Party, the **Engineer** and the **City Engineer** shall review the conditions associated with the request and determine the necessity of a modification. When the Parties agree that a modification is warranted, the **Engineer** and the **City Engineer** shall negotiate the specific modification(s) and any changes in the Total Maximum Fee or Project Schedule resulting from the modification(s). Approval of a modification shall be in the form of a written Modification to the Scope of Services which clearly defines the changes to the previously approved Scope of Services, Fee and/or Project Schedule. Said written Modification shall be approved by **Engineer**, authorized by the City Council, if required, and issued by the **City Engineer**. Issuance of the approved Scope of Services modification shall constitute a notice to proceed with the Project in accordance with the modified Scope of Services. The **City Engineer** may issue written Modifications to the Scope of Services without prior approval of the City Council when the modifications are to be accomplished within the authorized Total Maximum Fee and do not materially or substantively alter the overall scope of the Project, the Project Schedule or the Services provided by the **Engineer**.

6. **Project Deliverables.** Refer to Attachment A, Scope of Services, for deliverables the **Engineer** shall provide to the **City** in the specified format for each task.
7. **Project Control.** It is understood and agreed that all Services shall be performed under the administrative direction of the **City Engineer**. No Services shall be performed under this Contract until a written Notice to Proceed is issued to the **Engineer** by the **City Engineer**.
8. **Partnering.** The **City** shall encourage participation in a partnering process that involves the **City, Engineer** and his or her sub-consultants, and other supporting jurisdictions and/or agencies. This partnering relationship shall begin at the Pre-Design Meeting and continue for the duration of this Contract. By engaging in partnering, the parties do not intend to create a legal partnership, to create additional contractual relationships, or to in any way alter the legal relationship which otherwise exists between the **City** and the **Engineer**. The partnering effort shall be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives of partnering are effective and efficient contract performance and completion of the Project within budget, on schedule, in accordance with the Scope of Services, and without litigation. Participation in partnering shall be totally voluntary and all participants shall have equal status.
9. **Disputes.** The **City Engineer** shall act as referee in all disputes under the terms of this Contract between the Parties hereto. In the event the **City Engineer** and the **Engineer** are unable to reach acceptable resolution of disputes concerning the Scope of Services to be performed under this Contract, the **City** and the **Engineer** shall negotiate in good faith toward resolving such disputes. The **City Engineer** may present unresolved disputes arising under the terms of this Contract to the City Manager or designee. The decision of the City Manager or designee shall be final and binding. An irreconcilable or unresolved dispute shall be considered a violation or breach of contract terms by the **Engineer** and shall be grounds for termination. Any increased cost incurred by the City arising from such termination shall be paid by the **Engineer**.
10. **Engineer's Seal.** The **Engineer** shall place his Texas Professional Engineers seal on all engineering documents and engineering data prepared under the supervision of the **Engineer** in the performance of this Contract.
11. **Liability.** Approval of the Plans, Specifications, and Estimate (PS&E) by the **City** shall not constitute nor be deemed a release of the responsibility and liability of **Engineer**, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, working drawings, tracings, magnetic media and/or computer disks, estimates, specifications, investigations, studies or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the **City** for any defect, error or omission in the design, working drawings, tracings, magnetic media and/or computer disks, estimates specifications, investigations, studies or other documents prepared by **Engineer**, its employees, subcontractors, agents and consultants. **Engineer** shall indemnify **City** for damages resulting from such defects, errors or omissions and shall secure, pay for and maintain in force during the term of this Contract sufficient errors and omissions insurance in

the amount of \$250,000.00 single limit, with certificates evidencing such coverage to be provided to the **City**. The redesign of any defective work shall be the sole responsibility and expense of the **Engineer**. Any work constructed, found to be in error because of the **Engineer's** design, shall be removed, replaced, corrected or otherwise resolved at the sole responsibility and expense of the **Engineer**. The parties further agree that this liability provision shall meet the requirements of the express negligence rule adopted by the Texas Supreme Court and hereby specifically agree that this provision is conspicuous.

12. **Indemnification.** **Engineer** shall indemnify, hold harmless and defend the City of Coppell, its officers, agents and employees from any loss, damage, liability or expense, including attorney fees, on account of damage to property and injuries, including death, to all persons, including employees of **Engineer** or any associate consultant, which may arise from any errors, omissions or negligent act on the part of **Engineer**, its employees, agents, consultants or subcontractors, in performance of this Contract, or any breach of any obligation under this Contract. It is further understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this agreement shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise to any person or entity. The parties further agree that this indemnification provision shall meet the requirements of the express negligence rule adopted by the Texas Supreme Court and hereby specifically agree that this provision is conspicuous.
13. **Delays and Failure to Perform.** **Engineer** understands and agrees that time is of the essence and that any failure of the **Engineer** to complete the Services of this Contract within the agreed Project Schedule shall constitute material breach of this Contract. The **Engineer** shall be fully responsible for its delays or for failures to use diligent effort in accordance with the terms of this Contract. Where damage is caused to the **City** due to the **Engineer's** failure to perform in these circumstances, the **City** may withhold, to the extent of such damage, **Engineer's** payments hereunder without waiver of any of **City's** additional legal rights or remedies. The **Engineer** shall not be responsible for delays associated with review periods by the **City** in excess of the agreed Project Schedule.
14. **Termination of Contract.** It is agreed that the **City** or the **Engineer** may cancel or terminate this Contract for convenience upon fifteen (15) days written notice to the other. Immediately upon receipt of notice of such cancellation from either party to the other, all Services being performed under this Contract shall immediately cease. Pending final determination at the end of such fifteen-day period, the **Engineer** shall be compensated on the basis of the percentage of Services provided prior to the receipt of notice of such termination and indicated in the final Design Progress Report submitted by the **Engineer** and approved by the **City**.
15. **Personnel Qualifications.** **Engineer** warrants to the **City** that all Services provided by **Engineer** in the performance of this Contract shall be provided by personnel who are appropriately licensed or certified as required by law, and who are competent and qualified in their respective trades or professions.

16. **Quality Control.** The **Engineer** agrees to maintain written quality control procedures. The **Engineer** further agrees to follow those procedures to the extent that, in the **Engineer's** judgment, the procedures are appropriate under the circumstances.
17. **Ownership.** All **Engineer's** designs and work product under this Contract, including but not limited to tracings, drawings, electronic or magnetic media and/or computer disks, estimates, specifications, investigations, studies and other documents, completed or partially completed, shall be the property of the **City** to be used as **City** desires, without restriction; and **Engineer** specifically waives and releases any proprietary rights or ownership claims therein and is relieved of liability connected with any future use by **City**. Copies may be retained by **Engineer**. **Engineer** shall be liable to **City** for any loss or damage to such documents while they are in the possession of or while being worked upon by the **Engineer** or anyone connected with the **Engineer**, including agents, employees, consultants or subcontractors. All documents so lost or damaged while they are in the possession of or while being worked upon by the **Engineer** shall be replaced or restored by **Engineer** without cost to the **City**.
18. **Project Records and Right to Audit.** The **Engineer** shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years following the Project completion, with full access allowed to authorized representatives of the **City** upon request for purposes of evaluating compliance with provisions of this Contract. Should the **City Engineer** determine it necessary, **Engineer** shall make all its records and books related to this Contract available to **City** for inspection and auditing purposes.
19. **Non-Discrimination.** As a condition of this Contract, the **Engineer** shall take all necessary action to ensure that, in connection with any work under this Contract it shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical impairment unrelated to experience, qualifications or job performance, either directly, indirectly or through contractual or other arrangements.
20. **Gratuities.** City of Coppell policy mandates that employees shall never, under any circumstances, seek or accept, directly or indirectly from any individual doing or seeking to do business with the City of Coppell, loans, services, payments, entertainment, trips, money in any amount, or gifts of any kind.
21. **No Waiver.** No action or failure to act on the part of either Party at any time to exercise any rights or remedies pursuant to this Contract shall be a waiver on the part of that Party of any of its rights or remedies at law or contract.
22. **Compliance with Laws.** The **Engineer** shall comply with all Federal, State and local laws, statutes, City Ordinances, rules and regulations, and the orders and decrees of any courts, or administrative bodies or tribunal in any matter affecting the performance of this Contract, including without limitation, worker's compensation laws, minimum and maximum salary

and wage statutes and regulations, and licensing laws and regulations. When required, **Engineer** shall furnish the **City** with satisfactory proof of compliance therewith.

23. **Severability.** In case one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
24. **Venue.** With respect to any and all litigation or claims, the laws of the State of Texas shall apply and venue shall reside in Dallas County.
25. **Prior Negotiations.** This Contract supersedes any and all prior understandings and agreement by and between the Parties with respect to the terms of this Contract and the negotiations preceding execution of this Contract.
26. **Contacts.** The **Engineer** shall direct all inquiries from any third party regarding information relating to this Contract to the City Engineer.

27. **Notification.** All notices to either Party by the other required under this Contract shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such Party at the following respective addresses:

City: City of Coppell, Texas
Kent Collins, P.E.
Asst. Dir. of Engineering

Engineer: BGE, Inc.
Chris Kuykendall, PE
Principal

IN WITNESS WHEREOF, the City of Coppell, Texas and the **Engineer** has caused these presents to be executed by duly authorized representatives on the day and year set forth above.

THE CITY OF COPPELL
BY:

City Manager

Date: _____

ATTEST:

ENGINEER: _____
BY:

Name & Title

Date: _____

ATTEST:

(CORPORATE SEAL)

ATTACHMENT "A" BASIC SERVICES SERVICES TO BE PROVIDED BY THE ENGINEER

FREEPORT PARKWAY

PROJECT MANAGEMENT TASK

The Engineer shall provide Project Management Services at the request of the City. These services shall include, but are not limited to the following:

1. Construction cost estimate and validation
 - a. The Engineer shall prepare and/or review the total cost estimate for the Project and identify risks and opportunities related to the cost of the Project. Deliverable: Total project cost estimate, if applicable, or review comments of the cost estimate prepared by others, to be reviewed and updated as needed (electronic format).
2. Construction timeline estimate and validation
 - a. The Engineer shall use Primavera software to prepare an overall master project schedule or review schedules prepared by the Contractor for construction. The Engineer shall also develop schedules for staffing for the Engineer's personnel. Deliverable: Master Project Schedule in Primavera (P6) format, if applicable (electronic format). Review comments of Contractor's construction schedule (electronic format).
3. Monthly progress report, schedule review and float evaluation
 - a. The Engineer shall review, assess, monitor, and update monthly all detailed schedules and all schedules produced by others including Contractors, Utility Companies, and third party agencies, and shall integrate critical milestone elements within the Engineer's master schedule. Deliverable: Monthly schedule reports and review comments including a critical path report (electronic format).
 - b. On a monthly basis, the Engineer shall review and assess the Contractor's project progress for conformance to submitted baseline schedules and contract requirements. The Engineer shall use best management practices and tools to identify potential contract performance issues and shall report those issues promptly to the City PM. Deliverable: Monthly schedule review comments and narrative discussion of progress along with identification of any schedule recovery strategies (electronic format).
4. Contractor RFI/Field Change/Claims Review
 - a. The Engineer shall support City staff during construction of the Project through reviews of Requests for Information and field design changes. Deliverable: Review comments and/or recommendations for approval or rejection of RFIs and design changes proposed by Contractor (electronic format).
 - b. If claims are filed by the Contractor, the Engineer shall assist the City PM by providing information and answering questions relating to the claims. The Engineer shall review and determine whether the Developer's claims are in fact valid or not justified. Deliverable: Written recommendation and documentation concerning review and assessment of claims submitted by Contractor (electronic format).
5. Overall project reporting and documentation
 - a. The Engineer shall update the City's PM and support team weekly or monthly on key tasks accomplished during the past period, meetings and key activities for the

- upcoming week, and identify outstanding issues requiring resolution. Deliverable: Meeting minutes of weekly or monthly meetings with City PM (electronic format).
- b. The Engineer shall prepare monthly reports for project invoices noting project progress to date including a percent complete of all scope items, progress, assessment of Project Schedule, major tasks accomplished during the previous month, major activities planned for the next 90 days, outstanding issues requiring resolution, review project financial status, and update cost-to-complete budgets, as appropriate. Deliverable: Monthly report of project progress, scope items completed by Engineer, upcoming activities, outstanding issues, and financial status of project (electronic format).
6. Project Risk identification and management
- a. The Engineer shall identify risks associated with the Project and document these risks for monthly review with the City. The initial and monthly assessment of risks include: scope, geotechnical exposure from differing site conditions, environmental considerations, outside political influence, site and weather-related conditions, construction methods, projected market conditions, and schedule. Deliverable: A risk register containing the results of risk assessment to be updated monthly based on project progress (electronic format).
7. Staff training and enhancement
8. Other project related tasks
- a. The Engineer will conduct on-site reviews on an interval agreed to by the Engineer and City. The purpose of the review will be to assist in other tasks and field verify that schedule, conditions, progress, etc. are in alignment.
 - b. The Engineer shall review plans, specifications, and estimates (PS&E) prepared by others considering geometric configurations, traffic operations, long-term maintenance accessibility, safety issues, cost effectiveness, and constructability, in order to identify areas of concern. Deliverable: Review summary and recommendations, if applicable (electronic format).
 - c. As needed and requested by the City, the Engineer shall provide support to the City PM on any other project management and administration activities including contract management, scheduling, environmental studies, right-of-way and utility coordination, agency coordination, and review and coordination of all design and construction activities performed by others.
 - d. The Engineer shall attend any pre-bid and pre-construction meetings for the Project. Deliverable: Meeting minutes (electronic format).