

**CITY OF GALVESTON**  
**PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Galveston, Texas, hereinafter called the “City”, and Applied GRT hereinafter called “COMPANY”, located P.O. Box 690425, Houston, Texas 77269 in connection with the following project:

**3<sup>rd</sup> Party Consultant & Project Education Services for Airport Pump Station**

This agreement between the Parties consist of the terms and conditions set forth herein, and in those documents, attached and incorporated for all purposes; Exhibit “A”, identified as Responsive Proposal from COMPANY

WHEREAS, the City desires to engage COMPANY to render certain services in connection with the above stated project.

**NOW THEREFORE**, the parties do mutually agree as follows:

**PART I**

1. Scope of Services

The Scope of Services shall be as set forth in the attached “Exhibit A”.

2. Time of Performance - The services as set forth in Exhibit A shall commence on the above referenced date of this Agreement. Due to the nature and extent of the project the term of this agreement is 5 years from the date of execution of the agreement. The parties may terminate this agreement by a written termination signed by both parties.

3. Independent Contractors – The parties are independent contractors as to each other. Nothing in this Contract shall be construed as creating any agency or employment relationship. Neither party shall make any representations tending to create an apparent or implied agency or employment relationship. Neither party has the authority to act for the other or to create obligations or debts binding on the other. Neither party shall be responsible for any obligations or expenses incurred by the other.

4. Standard of Care – The standard of care for all contractual and related services performed or furnished by COMPANY 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.

5. Access to Information - It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above

shall be furnished to COMPANY by the City and its agencies. The City and its agencies will cooperate with COMPANY in every way possible to facilitate the performance of the work described in the contract.

6. Appropriations - The obligations of the City to make payment under this Agreement are expressly subject to appropriations by the City of funds that are lawfully available to be applied to such purpose.
7. Compensation - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **\$40,000.00** Invoices are submitted by COMPANY each month (not necessarily falling on the first or last day of the month). City shall notify COMPANY in writing, of any and all objections, if any, to an invoice within ten (10) days of the date of invoice. Otherwise, the invoice shall be deemed proper and acceptable by the City. Amounts indicated on invoices are due and payable immediately upon receipt. City's account will be considered delinquent if COMPANY does not receive full payment within thirty (30) days after the invoice date.
8. The City shall not be responsible for payment to COMPANY for any additional services or expenses not specifically included in Exhibit "A", except upon execution of an amendment to this Agreement in writing by both parties. Parties shall attempt to resolve any payment disputes within sixty (60) days or the matter may be submitted to mediation
9. INDEMNIFICATION: FOR CONSIDERATION RECEIVED, COMPANY shall indemnify, defend, save and hold the City of Galveston harmless, including City's officers, agents, employees and servants, from any claims, actions, lawsuits, proceedings, damages, loss, damage, judgments, liabilities or expense on account of damage to property and injuries, including death, which may arise or result, in whole or in part from any negligent act or omission of COMPANY or those acting under COMPANY'S supervision or control. COMPANY shall not be responsible, however, for any loss, damage, liability or expense on account of damage to property and injuries, including death, which may arise from the sole negligence of the city. **COMPANY shall comply with the requirements of all current applicable laws, rules and regulations and shall indemnify, and hold harmless the City and its agency members from and against the failure to comply with those laws, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.**
10. Construction – This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas. Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement. In any case, if one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall not

be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

11. Termination of Contract for Cause. If, through any cause, COMPANY shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if COMPANY shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to COMPANY of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by COMPANY under this Contract shall, at the option of the City, become property of the City and the COMPANY shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, COMPANY shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by COMPANY, and the City may withhold any payments to COMPANY for the purpose of set-off until such time as the exact amount of damages due the City from COMPANY is determined.
12. Termination for Convenience of the City. The City may terminate this Contract at any time by giving at least ten (10) days' notice in writing to COMPANY. If the Contract is terminated by the City as provided herein, COMPANY will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of COMPANY, Paragraphs relative to termination shall apply.
13. Modification: No change in the terms of this Contract shall be binding unless it is in writing and signed by an authorized representative of both parties.
14. Force Majeure: No party to this agreement shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible or which is not in its control.
15. Proof of Insurance: COMPANY shall maintain certain types of insurance protection throughout the duration of the project. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas, using an insurance company with an A.M. Best rating of a B+ or better.
16. Required Insurance: Commercial general liability insurance, naming the City of Galveston as an additional insured and as certificate holder, and waiving subrogation per the contractual requirements of this project; Automobile Liability Insurance, Worker's Compensation Insurance and Professional Liability Insurance. Limits are to be equal to or greater than:
  - a. **Commercial general liability insurance:**
    - \$2,000,000 general liability (includes products and personal, etc.)
    - \$1,000,000 fire damage
    - \$1,000,000 automobile damage

**\$500,000** workers compensation employers' liability  
**Statutory** limits for workers compensation  
Insurance coverage shall be on an "**occurrence basis**"

17. Assignability: COMPANY shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City. Unless specifically stated to the contrary in any written consent to assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
18. Reports and Information: COMPANY, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
19. Findings Confidential: To the extent permitted by law, all of the reports, information, data, etc., prepared or assembled by COMPANY under this contract are confidential and COMPANY agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
20. Copyright: No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of COMPANY.
21. Compliance with Local, State and Federal Laws: This Contract shall be construed under and in accordance with the laws of the State of Texas, with jurisdiction in the courts of the State of Texas and venue in Galveston, County regardless of where the obligations of the parties were performed. By execution of this Contract, the parties agree to subject themselves to the jurisdiction of the Courts of the State of Texas in all matters relating to or arising out of this Contract or the Work.
22. Notices: All notices required or permitted under this Contract shall be in writing and shall be deemed given when delivered in person or three days after deposit in the United States Mail, postage prepaid, addressed to the party's address reflected at the end of this Contract. A party's notice address may be changed from time to time by that party's providing written notice to the other. A copy of the notice to the City shall be sent to:

City Attorney  
City of Galveston  
823 Rosenberg, Room 203  
P.O. Box 779  
Galveston, Texas 77553

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first above written.

CITY OF GALVESTON, TEXAS

**Applied GRT**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Brian Maxwell

NAME: \_\_\_\_\_

TITLE: City Manager

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved As To Form

\_\_\_\_\_  
City Attorney's Office

**BY EXECUTION OF THIS AGREEMENT, COMPANY ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.**

November 8, 2019

Mr. Dudley Anderson  
Building Program Manager  
City of Galveston  
823 Rosenberg  
P.O. Box 779  
Galveston, TX 77553

**PROPOSAL FOR: 3<sup>rd</sup> Party Contract Administration & Project Evaluation Services;  
Airport Pump Station-City of Galveston, Galveston, TX;  
-Consultant Services**

Dear Mr. Anderson,

Applied GRT LLC (GRT) is pleased to submit a fee proposal to provide 3<sup>rd</sup> Party Contract Administration & Project Evaluation Services for the City of Galveston (the City). Typical project management services may be required as outlined below. We understand the Contract Documents (CDs) are nearly complete and the City is actively procuring the General Contractor (GC) thru the selection process.

**SCOPE AND FEE**

This project is described as a new pump station at the City of Galveston Airport with an approximate construction cost of \$6,000,000 and an anticipated construction duration of 12 months.

The Work will primarily consist of acting as a 3<sup>rd</sup> Party Consultant for the City. In that capacity we will review the project related activities and monitor the progress of the construction completion. We will identify issues and recommend solutions to the City for your consideration. Compliance of the contract administration will be based on CDs prepared by the Engineer of Record (EOR), including the Drawings, Specifications, and Owner related Contracts to Engineers, Contractors and Consultants. This also includes any other documents the COG would like reviewed pertaining to this project.

We propose a Not to Exceed Fee of \$40,000.00. The Fee is anticipated to be broken out as follows:

<b><u>Not to Exceed Fee:</u></b>		<b><u>\$ 40,000.00</u></b>
<b>Anticipated Breakdown of Fee</b>	<b>12 Months</b>	
Construction Administration	12 Months	<b>\$ 37,000.00</b>
Reimbursable Expenses	Lump Sum	<b>\$ 3,000.00</b>

November 8, 2019  
Mr. Dudley Anderson  
City of Galveston

**SCOPE OF SERVICES**

We will provide 3<sup>rd</sup> Party Contract Administration Services as outlined below:

1. Monitor responsibility matrix of team, including, but not limited to EOR, GC, and other Consultants procured by Owner.
2. Assist with day to day decision making to shorten response times to critical components of the project and provide correctional guidance to entire team.
3. Monitor Design Team, including EOR and their Consultants, with day to day activities for contractual compliance.
4. Review logs of critical Submittals and shop drawings with the City for compliance and conformance with provided Guidelines.
5. Review logs of RFIs, CPRs, ASIs and any other document for conformance with Contract Documents, Guidelines, and industry best practices.
6. Monitor Project Controls related information, as required, so the City can evaluate status of project at any time.(Financially and Performance)
7. Visit project site during construction, including construction meetings every two weeks with photo documentation of progress.
8. Provide monthly Executive Summaries summarizing project status, with photos.
9. Identify and escalate project related issues with recommend solutions to the City for consideration. (Excessive response times by EOR, GC not maintaining schedule)
10. Assist with completion and occupancy schedule for Owner.
11. Monitor project close out activities, including trainings, warranties, AHJ compliance, and move in coordination.

**SERVICES NOT TO BE PERFORMED (ADDITIONAL SERVICES):**

- i. These 3<sup>rd</sup> Party Contract Administration Services do not replace the Owner's Representative Services that may be contracted elsewhere by the City.
- ii. 11 month walk after project Substantial Completion.
- iii. 12 Month Warranty coordination

**COMPENSATION (ADDITIONAL SERVICES):**

When ADDITIONAL SERVICES are requested in writing, The City of Galveston shall compensate Applied GRT LLC under the terms and conditions of this agreement.

- i. Applied GRT LLC shall invoice on an hourly basis each month not to exceed the maximum established herein as follows:

Principal in Charge	\$160.00/hr.
Project Manager	\$140.00/hr.
Project Controls Analyst	\$90.00/hr.
Site Visits	Hourly per visit + Reimb. Expenses
- ii. Reimbursable Expenses, such as printing and reproduction costs, travel expenses (per IRS Standard mileage rate) shall be invoiced at direct cost.
- iii. Services, not specifically identified in the Scope of Services or elsewhere in this proposal, shall be considered Additional Services.

November 8, 2019  
Mr. Dudley Anderson  
City of Galveston

- iv. Adjustments to this contract may be requested due to contract extensions and/or change orders that may increase scope or fee of GRT. These adjustment requests will be made in writing. These Services may be considered correctional in nature.

**COMPENSATION TERMS:**

- i. Services identified or requested by the City exceeding the project guidelines above will be considered **ADDITIONAL SERVICES**.
- ii. GRT will secure approval, in writing, from the City for any requested additional service before proceeding with the work.
- iii. All invoicing shall be in accordance with our standard office invoicing procedures with invoices delivered to your office on or about the first day of each month. GRT will invoice for the hours completed on the project to date.
- iv. Payment shall be made within thirty (30) days of receipt of invoice.
- v. Should these services be interrupted or delayed, GRT will invoice for the man hours completed at that time. Outstanding invoices will be due and payable as described herein.

**AGREEMENT:** We are sending you our agreement electronically. Should this contract meet your approval, please indicate your acceptance by signing at the location indicated below and returning to us.

In the event that the not to exceed amount of \$40,000.00 is not sufficient, due to billable time being consumed, the City will have the option of terminating the engagement, or may obtain the authorization of City Council to continue the engagement.

Best Regards,

Accepted by:



Mr. Scott Fendrick, AIA, CxA+BE  
Founding Partner  
Applied GRT LLC  
Date 11/08/2019

\_\_\_\_\_  
Mr. Dudley Anderson  
Building Program Manager  
City of Galveston  
Date \_\_\_\_\_

Enclosure: None

Cc:  
Mr. Donald S. Glywasky  
City Attorney

Ms. Kim Coogan  
Assistant City Attorney

\_\_\_\_\_  
Mr. Brian Maxwell  
City Manager  
City of Galveston  
Date: \_\_\_\_\_