



PROFESSIONAL SERVICES AGREEMENT

(Version 9-22-2023)

This AGREEMENT (“Agreement”) is entered by and between **UES Professional Solutions 44, LLC** (the “Professional”), located at **15811 Tuckerton Road Houston, TX 77095** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

- 1. Scope of Services:** Professional will perform the services as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **construction materials testing related to the phase 2 Reconsrtruction of Turner Street and Butler Road Project**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**, if applicable. If there is a conflict between the terms of this Agreement and Exhibits A (or B, if applicable), the terms of this Agreement will prevail.
- 2. Term and Termination:** This Agreement shall commence on **March 31, 2025** and shall expire on **August 30, 2026** City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Professional. Upon such termination, City shall pay Professional, at the rate set out in **Exhibit A**, for services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
- 3. Compensation:** Professional shall be paid for the services as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$97,998** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services only after such services are completed and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Professional must submit to City invoices for all services provided, which invoices must include details and dates of service. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Professional, City shall give Professional specific reasons for disapproval in writing.
- 4. Insurance:** Professional **is** required during the Contract Term to maintain insurance as set forth below: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and (c) If at any point during the Contract Term it is foreseeable that Professional will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—

exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Liquidated damages **are not** applicable to this transaction. Professional acknowledges that time is of the essence in performing this Agreement. City and Professional (collectively, the “Parties”) agree that if Professional is late in performing any service designated as **Time Critical** on the Scope of Services attached to this Agreement, City will suffer loss, damages, or other harm from Professional’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred as a result of Professional’s delay is incapable or difficult to precisely estimate, and therefore the Parties desire to stipulate the amount of such loss, damages, or harm. Accordingly, Professional shall have deducted from any amounts owed under this Agreement liquidated damages equal to the number of calendar days of the delay(s) times the daily rate, which rate shall be one-tenth of one percent (0.1%) times the compensation shown in the Scope of Services for such Time Critical service. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Professional’s delay; (ii) one of the reasons for City and Professional to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Professional are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, Professional hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Professional shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Professional hereby waives and appoints City to assert on Professional’s behalf Professional’s moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.

8. **Confidentiality:** During the course of the services to be provided under this Agreement, Professional may become privy to confidential information of City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Professional shall promptly notify City of any misuse or unauthorized disclosure of City's confidential information and upon expiration of this Agreement shall return to City all confidential information in Professional's possession or control. Professional shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Professional without the prior written approval of City.
9. **Warranties and Representations:** Professional warrants and agrees that Professional shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Professional warrants and agrees that Professional will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
10. **Licenses/Certifications:** Professional represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Professional's performance of this Agreement. If Professional is a business entity, Professional warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Professional.
11. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: PROFESSIONAL SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROFESSIONAL**

OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.

14. **Force Majeure:** Neither party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.
16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Professional certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State Auditor:** Professional understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
21. **Eligibility to Receive Payment:** Professional certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.

22. **Payment of Debt/Delinquency to State:** Professional certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Professional will provide services under the Agreement, Professional covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** All work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work will be Professional's responsibility.
25. **Publicity:** Professional shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any 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, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
29. **Authority:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. Professional warrants and represents that Professional has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.

30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Professional. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Professional verifies that Profession (1) does not boycott Israel and will not during the term of this Agreement per Section 2274.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

(signature block on next page)

Executed on _____ . *(date to be filled in by City Secretary)*

UES PROFESSIONAL SOLUTIONS 44, LLC - "Professional"



Chuck Salsky

CITY OF LEAGUE CITY - "City"

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule
(4) pages, including this page)

See Next Page



March 17, 2025

Mr. Jaime Dino
City of League City
300 West Walker
League City, TX 77573

Re: UES Proposal No. 109790
Construction Materials Testing
Phase 2 Reconstruction of Turner Street and Butler Road
League City, TX

Dear Mr. Dino:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

UES has integrated the resources of Alpha Testing, Riner Engineering, Rock Engineering and Testing and In-Control Technologies to form the largest geotechnical engineering, materials testing, special inspection and environmental services firm in the Texas Gulf Coast region. Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Houston area, UES is accredited by the American Association for Laboratory Accreditation (A2LA) and meets the requirements of ASTM E329. We also participate in Cement and Concrete Reference Laboratory (CCRL) and AASHTO resource proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the City and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

This proposal is in accordance with the Professional Services Agreement between UES Professional Solutions 44, LLC and League City.

Mr. Jaime Dino
UES Proposal No. 109790
March 17, 2025

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

UES



Jennifer Ochoa
CMT Project Estimator

ESTIMATED BUDGET: \$97,998.00

UES

Construction Materials Engineering and Testing
 Basic Services and Cost Estimate

Project Name: Phase 2 Reconstruction of Turner Street and Butler Road; League City, TX

DESCRIPTION	Estimated Quantity	Unit Rate	Estimated Total
<u>EARTHWORK - UTILITIES</u>			
Moisture Density Relationship, ASTM D-698 (each)	3	\$225.00	\$675.00
Moisture Density Relationship, Soil Cement Mix. ASTM D-558 (each)	3	\$230.00	\$690.00
Compressive Strength, Molded Soil Cement Mix. ASTM D-1633 (each)	12	\$60.00	\$720.00
Atterberg Limits (each)	3	\$80.00	\$240.00
Minus No. 200 Sieve (each)	3	\$85.00	\$255.00
Engineering Technician (hourly)	300	\$64.00	\$19,200.00
Nuclear Density Equipment Charge (per trip)	43	\$85.00	\$3,655.00
Transportation Charge (per trip)	46	\$75.00	\$3,450.00
Project Management and Report Review (hourly)	40	\$150.00	\$6,000.00
<u>EARTHWORK - PAVING</u>			
Moisture Density Relationship, ASTM D-698 (each)	3	\$225.00	\$675.00
Atterberg Limits (each)	7	\$80.00	\$560.00
Minus No. 200 Sieve (each)	3	\$85.00	\$255.00
Engineering Technician (hourly)	300	\$64.00	\$19,200.00
Nuclear Density Equipment Charge (per trip)	41	\$85.00	\$3,485.00
Transportation Charge (per trip)	44	\$75.00	\$3,300.00
Project Management and Report Review (hourly)	35	\$150.00	\$5,250.00
<u>CONCRETE - PAVING</u>			
Concrete Observation and Reinforcing Steel Inspection (hourly)	232	\$64.00	\$14,848.00
Concrete Test Cylinders (each)	184	\$22.00	\$4,048.00
Transportation Charge (per trip)	38	\$75.00	\$2,850.00
Project Management and Report Review (hourly)	28	\$150.00	\$4,200.00
<u>ASPHALT - PAVING</u>			
Engineering Technician, (hourly)	20	\$64.00	\$1,280.00
Extraction/Gradation (ASTM D-2172, ASTM C-136 or TEX-210F) (each)	2	\$250.00	\$500.00
Stability - Hveem (ASTM D-1560 or TEX-208F) (3 per set)	2	\$125.00	\$250.00
Lab Molded Density Set (TEX-207F & TEX-208F) (3 per set)	2	\$125.00	\$250.00
Maximum Theoretical Specific Gravity (TEX-227F) (each)	2	\$175.00	\$350.00
Core Equipment Charge (each)	2	\$371.00	\$742.00
Asphalt Core Density Tests (each)	2	\$115.00	\$230.00
Asphalt Core Depth Measurement (each)	2	\$20.00	\$40.00
Asphalt Core Restoration (each)	2	\$25.00	\$50.00
Transportation Charge (per trip)	4	\$75.00	\$300.00
Project Management and Report Review (hourly)	3	\$150.00	\$450.00
<u>ESTIMATED BUDGET</u>			\$97,998.00

Proposal No.	109790
Project Name	Phase 2 Reconstruction of Turner Street and Butler Road; League City, TX
PROPOSAL ASSUMPTIONS AND BASIS FOR ESTIMATE	
Construction Documents	<ol style="list-style-type: none"> Enclosed budget is based on Civil drawings ("Construction" set dated 09/04/2024) and bid tabulation (dated 10/2024) as provided by City of League City. UES did not have a detailed construction schedule during the preparation of this estimate.
Earthwork	<ol style="list-style-type: none"> The enclosed budget allows up to 30 inspection days to monitor the 218,200 SF of earthwork relating to the paving including proof roll, lime pulverization, and compaction on stabilized subgrade. UES has assumed monitoring to be performed on an average 8 hours per day basis, during these tasks. This duration could vary, up or down, depending on the schedule and production of the earthwork contractor. The enclosed budget allows up to 43 inspection days to monitor onsite earthwork relating to utility trench backfill. UES has assumed monitoring to be performed on an average 8 hours per day basis, during these tasks. This duration could vary, up or down, depending on the schedule and production of the utility contractor. Lime pulverization, depth checks and compaction testing in paving areas = 1 test per lift per 5,000 SF. Compaction testing for utilities = 1 test per 6-inch lift per 100 LF.
Concrete	<ol style="list-style-type: none"> Concrete cylinders will be cast at a minimum rate of 1 set of 4 cylinders per mix per day or 1 set of 4 cylinders per mix per 100 CY, whichever is greater, on all pours. Enclosed budget assumes the following number of pours for the project: <ol style="list-style-type: none"> Paving (203,400 SF): 24 pours; Stand-alone cylinder pickups are assumed to be required on all concrete pours.
General	<ol style="list-style-type: none"> Field testing services will be provided on an "as requested" basis when scheduled by your representative. A minimum of 24 hours' notice is required to properly schedule our services. To schedule our services please contact our dispatcher at (713) 360-0462 during our office hours from 7:00 AM to 5:00 PM. UES shall not be held responsible for tests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of testing. UES requests that City arranges for a coordination/scheduling meeting at the onset of each major work task (e.g., Earthwork - Buildings, Foundations, Concrete - Buildings) to verify testing and inspection scope, schedule, and assumptions. <i>During the time of this cost estimate no construction schedule was available for estimating purposes. The construction schedule is a critical item in determining a precise cost estimate for construction materials testing. In lieu of a defined construction schedule UES will estimate the project based on comparable project production rates and typical industry standards. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.</i> All time is for a minimum of four hours. The contractor shall be responsible for providing a protected storage container for concrete cylinders at a point on the job site mutually agreeable with UES for the purpose of storing concrete cylinders until they are transported to the Laboratory. The container shall be constructed and equipped to maintain the environment specified for initial curing in ASTM C31 (section 10.1.2). Measurement uncertainty is not taken into account by UES when issuing statements of conformity as to whether tested items pass or fail specified values (ISO 17025-17, 7.1.3). Project Engineering services on materials engineering and testing, for consultation, analysis, report preparation and review, and supervision and scheduling of field and laboratory personnel will be charged on a "per report" basis. UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. UES also provides an extranet where CMT reports, and expenditures can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed.

Exhibit B

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