

employee, or subcontractor, and the Consultant hereby agrees to hold City harmless from any such claims by it or its associates, and any cost or expense related thereto.

6. Default: In the event of a failure by either party to satisfactorily perform the services specified herein and/or a default by either party in abiding by the other terms and conditions of this Agreement, either party may terminate the Agreement on written notice to the other party and the defaulting party shall be liable for all damages, costs, and expenses (including attorney fees) incurred by the non-defaulting party related to this default.

7. Alternative Dispute Resolution: The dispute resolution process provided for in Chapter 154 of the Texas Civil Practice and Remedies Code may be used, by City and Consultant to attempt to resolve any claim for breach of contract made by Consultant, to the extent it is applicable to the Agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by City or the State of Texas of the right to seek redress in a court of law.

8. Assignment: The parties recognize that this contract is based upon the skill and expertise of the parties and therefore agree that the contract and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this contract.

9. Compliance with Law: Consultant shall certify that he/she or it is in compliance with all applicable state and federal laws, including non-discrimination laws as it relates to the terms and conditions of the agreement.

10. Non-Appropriations: Consultant understands that City is a governmental entity, and should the Legislature fail to provide funding for any period during the term of this contract, City shall be excused for all liability for payment. City is required to give Consultant written notice within thirty (30) days after learning that the funds will not be available. Upon receiving written notice from City, this contract will automatically terminate

11. Notices: Any notice given under this contract by either party to the other may be effected 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 notice shall be deemed communicated three (3) days after mailing.

12. Officials Not To Benefit: No Mayor, Council-person, officer, director, employee, administrator and representative of City shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

13. **Choice of Law/Venue/Statute of Limitations:** The validity of this Agreement and the interpretation of its terms and the applicable statute of limitations for any cause of action brought by or against City pursuant to the Agreement shall be governed by the laws of the State of Texas. Jurisdiction for any legal proceedings incident to this agreement shall lie in Galveston County, Texas.

14. **Force Majeure:** In the event of Force Majeure, City may terminate this agreement by written notice following such casualty and City shall not be responsible for any damages sustained by Consultant. Force Majeure shall mean fire, earthquake, flood, act of God, strikes or other labor disturbances, riots or civil commotion, litigation, terrorism, war or other acts of any foreign nation, power of government or government agency or authority, or any other cause like or unlike any cause above-mentioned which is beyond the control or authority of City.

15. **Subcontracts:** Any subcontracts and outside associates or consultants required by Consultant in connection with the services covered by this contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Consultant shall ensure that each subcontractor complies with all provisions of the Agreement and this Addendum. Consultant shall remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.

16. **Tax Exemptions:** City and Consultant agree that City will not be required to pay any taxes for which it can demonstrate an exemption.

17. **Confidentiality:** Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval.

18. **Intellectual Property:** Consultant represents that it has all intellectual property rights necessary to enter into and perform its obligations under the Agreement and shall indemnify, defend and hold harmless the State of Texas and City against any action, claim, liability, loss or expense related to such intellectual property rights and representations. Consultant will pay any damages attributable to such claim that are awarded against the State of Texas and/or City in a judgment or settlement.

19. **INDEMNIFICATION: CONSULTANT SHALL INDEMNIFY, AND HOLD HARMLESS CITY, AND EACH OF ITS REGENTS, 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, TO THE EXTENT THAT SUCH COSTS ARE CAUSED BY THE CONSULTANT'S NEGLIGENT ACTS, ERRORS**

OR OMISSIONS. IN THE EVENT CLAIMS, LOSSES, DAMAGES OR EXPENSES ARE CAUSED BY THE JOINT OR CONCURRENT NEGLIGENCE OF THE CITY AND CONSULTANT, THE CONSULTANT SHALL BEAR ONLY SUCH COSTS THAT ARE IN PROPORTION TO ITS OWN PROPORTION OF NEGLIGENCE.

20. Insurance: For the entire term of the Agreement (“Term”), Consultant shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence. If, during the Term, Consultant will enter City property, Consultant shall also maintain the following insurance: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$2,000,000 per occurrence; and (iv) for builders only: Builder’s Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name City as Additional Insured. Consultant shall pay all insurance deductibles. Consultant shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

21. Audit: Independent Audits; Right to Audit; Retention; Supporting Documents: The Consultant agrees and authorizes City and/or the State Auditor (collectively, “Auditor”) to conduct audits or investigations in connection with this Agreement. Consultant agrees to cooperate with Auditors conducting such audits or investigations and to provide all information and documents reasonably requested. Consultant will include this provision in all contracts with permitted subcontractors.

22. 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”), and 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.

23. Sovereign Immunity: Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.

24. Representations by Consultants: Consultant 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 Consultant's performance of this Agreement. If Consultant is a business entity, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; 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 Consultant.

25. Eligibility to Receive Payment: Consultant 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.

26. Payment of Debt/Delinquency to City: Consultant 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. Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.

27. Products and Materials Produced in Texas: If Consultant will provide services under the Agreement, Consultant 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.

28. Risk of Loss: All work performed by Consultant pursuant to the Agreement will be at Consultant's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Consultant's responsibility.

29. Publicity: Consultant 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. The City's written approval may be revoked by the City in writing at any time for any reason.

30. Legal Construction/Severability: In the event that any one or more of the provisions contained in this contract 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 contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

31. Non-Waiver: 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.

32. Entire Agreement: This contract constitutes the entire contract and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing.

33. Amendment: This Agreement may be changed, amended, modified, extended or assigned only by mutual consent of the parties provided that consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect.

34. Binding Agreement: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, City and Consultant, by and through their duly authorized officers and representatives, have executed this Agreement as of the date first above written.

Executed on the _____ day of _____, 2016.

CONSULTANT

By: _____

Title: _____

CITY OF LEAGUE CITY

By: _____

Title: _____