

ENGINEERING SERVICES AGREEMENT
SEBESTA ROAD (CR 609) LEVEE UPGRADE
PART I - AGREEMENT

THIS AGREEMENT, entered into this **1 September 2007**, by and between the **CITY OF ANGLETON**, hereinafter called the "City", acting herein by Mayor **Patrick Henry**, hereunto duly authorized, and **BAKER & LAWSON, INC.**, hereinafter called "Firm", acting herein by Herbert S. Smith, P.E.

WITNESSETH THAT:

WHEREAS, the City of Angleton desires to implement certain **sewer improvements under the general direction of the Texas Community Development Program**; and Whereas the City desires to engage Baker & Lawson, Inc. to render certain services in connection with said sewer improvements.

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

1. Scope of Services

Part II, Scope of Services, is hereby incorporated by reference into this Agreement. Services performed shall be in accordance with the requirements and regulations contained in the contract between the City of Angleton and the Texas Department of Environmental Quality.

2. Time of Performance - The services of Baker & Lawson shall commence **on 1 October 2007** . This project shall be placed out for bid no later than **February 1, 2008**. In any event, all of the services required and performed hereunder shall be completed no later than **December 31, 2008**.

3. 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 Baker & Lawson, Inc. by the City and its agencies. No charge will be made to Baker & Lawson, Inc. for such information and the City and its agencies will cooperate with Baker & Lawson, Inc. in every way possible to facilitate the performance of the work described in the contract.

4. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall be in accordance with the amounts stated in Part III – Payment Schedule.

5. Indemnification – Baker & Lawson, Inc. shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against them, 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.

6. Miscellaneous Provisions

- A. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazoria County, Texas.
- B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
- C. In case 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 thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- D. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
- E. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to and incorporated into this Agreement.

7. Terms and Conditions - This Agreement is subject to the provisions titled, "Part IV Terms and Conditions" and attached hereto and incorporated by reference herein.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

CITY OF ANGLETON

BAKER & LAWSON, INC.

Patrick Henry ., Mayor

Herbert S. Smith, P.E.

ATTEST:

ATTEST:

Amanda Davenport, City Secretary

PART II
SCOPE OF SERVICES
ENGINEERING AGREEMENT

A. Sewer Improvements

Installation of new process pumping at Wastewater Treatment Plant No. 2; new digester and expanded chlorine contact chamber. Revise all yard piping as needed for the project. Where required the project scope shall include the repair of all streets, driveways, sidewalks and fences damaged as a result of this project. Construction shall take place at the locations shown on Attachment A1 and A2, which depict the locations of Target Area A

B. General - the following general description of services shall apply to the projects outlined in paragraph A above.

1. Attend preliminary conferences with the City regarding the requirements of the project.
2. Determine necessity for any acquisition of additional real property/easements/ROW's for the projects. If applicable, the owner may request that the firm furnish the following information for an additional fee to be negotiated at a later date:
 - a. Name and address of property owners;
 - b. Legal description of parcels to be acquired;
 - c. Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger boring, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Engineer will review any tests required and act as the City's representative in connection with any such services.
4. Prepare any railroad, highway, or other state, federal or special permits required for the project.
5. Prepare a preliminary engineering study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the City, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Engineer's recommendations; to be completed no later than 30 October 2007.

6. Furnish the City with three copies of the preliminary report (additional copies will be furnished to the locality at direct cost of reproduction).
7. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
8. Prepare bid packet, contract documents, and advertisement for bids (the cost of advertisement in newspapers or professional journals to be paid by the City); including provisions for bid, performance and payment bonds.
9. Conduct bid opening and prepare minutes.
10. Tabulate, analyze, review bids for completeness and accuracy.
11. Accomplish construction contractor eligibility verification and advise the City as to the capabilities and reliability of bidders.
12. Conduct preconstruction conference and prepare copy of report/minutes.
13. Issue "Notice to Proceed" to construction contractor.
14. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive based bid for construction does not exceed the funds available. Deductive alternatives can be taken to reduce the bid price.
15. Design for access by persons with disabilities the facilities to be used by the public in accordance with Public Law 504.
16. Ensure that the contractor has met all insurance and bond requirements before construction begins.
17. Perform all construction staking, one time only, necessary to complete the projects listed above.
18. Make periodic visits to the site to observe the progress and quality of work, and to determine in general if the work is proceeding in accordance with the Contract.
19. Consult with and advise the City during construction; issue to contractors all instructions requested by the City; prepare routine change orders as required, at no charge to the City when the change order is required to correct errors or omissions by the Engineer; provide price analysis for change orders; process and submit change orders to City for approval.
20. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).

21. Based on the Engineer's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor; such approvals of payment to constitute a representation to the City, based on periodic observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications, and contract documents.
22. Require that a 10% retainage be withheld from all payments on construction contracts until final acceptance by the City.
23. Prepare Certificate of Construction Completion and Clean Lien Certificate.
24. Conduct interim/final inspections.
25. Revise contract drawings, with the assistance of the owner's representative, to provide record drawings of the completed project.
26. Project Mapping/Design Information and Copyright
 - a. The Engineer shall maintain a copy of the final project record drawing(s) and engineering schematic(s), as constructed using funds under this contract. These maps shall be maintained in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the City. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version of the seal has been provided to the City. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be received and maintained by the City in written form. The Engineer shall provide the City, upon request, a copy of all the electronic files and other data received, including the original vector data, and all documentation in electronic format, on a CD or other media in a file format determined by City. If requested by City, the Engineer shall ensure that the CD copy of all the electronic files and other data provided to City are properly identified. Specifically, the CD label shall show the City's name, the City assigned contract number, the contents of the CD, the preparer's name, and the name of the software package(s) used to generate the maps on the CD.
 - b. Where activities supported by this contract produce copyrightable material, the Engineer shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such material without City's prior written approval. City reserves a royalty fee, non-exclusive, and irrevocable license to copy, produce, publish, and use such material, and to authorize others to do so.

- c. Provisions appropriate to effectuate the purposes of the subsection must be in all employment contracts, consultant contracts, including engineering consultant contracts, and other contracts or agreements in which funds received by the City under this contract are involved.

SUBCONTRACTS

1. No work under this Contract shall be subcontracted by Engineer without prior approval, in writing, from the City.
2. The Engineer shall, prior to proceeding with the work, notify City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If at any time during the progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Engineer who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting the subcontractors shall be subject to the same regulations. Nothing contained in the Contract shall create any contractual relation between any subcontractor and City.
4. The Engineer will include in all contracts and subcontracts of amounts in excess of \$100,000 a provision which requires compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act [42 U.S. 1857 (h)], Section 508 of the Clean Water Act (33 U.S.C. 1368d), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to TDHCA and to the U.S. Environmental Protection Agency Assistant Administrator for Enforcement.
5. The Engineer will include in all contracts and subcontracts other than for small purchases (less than \$10,000), provisions or conditions which will allow for administrative, contractual or legal remedies in instances which violate or breach of contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Engineer will include in all contracts and subcontracts in excess of \$10,000 suitable provisions for termination by the City, including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Engineer.
7. The Engineer will include in all contracts and subcontracts in excess of \$10,000 provisions requiring the compliance with the following:

- The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, physical or mental disability, marital status, parenthood, or age.
 - Executive Order 11246 – Equal Employment Opportunity.
 - Copeland Anti-Kickback Act.
 - (In excess of \$2,000) – Davis-Bacon Act.
 - (In excess of \$2,000) – Section 103 and 107 of the Contract Work Hours and Safety Standards Act.
 - A provision recognizing mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
 - Section 3 of the Housing and Urban Development Act of 1969.
 - Title VI of the Civil Rights Act of 1964.
8. The Engineer will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
 9. The Engineer will include in all negotiated contracts and subcontracts a provision to the effect that the City, the Comptroller General of the State of Texas, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
 10. The Engineer will include in all contracts and subcontracts a requirement that the Contractor maintain all relevant project records for three (3) years after the City has made final payment to the Contractor and all other pending matters are closed.

STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Engineer and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Engineer represents that it has the required skills and capacity to perform work and services to be provided under this Contract.

2. The Engineer presents that services provided under this Contract shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Engineer's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Engineer's expense if the deficiency is due to Engineer's negligence. The City shall notify the Engineer in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City under applicable state or federal law.
4. The Engineer agrees to and shall hold harmless the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Engineer, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Engineer doing the work herein contracted for or by or in consequence of any negligence in the performance of this Contract, or by or on account of any omission in the performance of this Contract.

**PART III
PAYMENT SCHEDULE
ENGINEERING AGREEMENT**

The City shall compensate the Firm in the following amounts:

- A. Basic Services** - includes the preparation of Plans and Specifications, governmental approvals, advertising (City pays publication costs) and receiving bids, Construction Phase services, preparation of as-built drawings and attendance at staff and City Council meetings, as requested, as well as all other services listed in Part II of this Agreement. The total amount of compensation for basic services shall be 13 % of the actual construction cost with an allowance of 2% for incidental surveys. The current estimate is \$167,600 for an estimated total fee of \$21,780 and an allowance of \$3,350 for incidental surveys.

Proposed fee distribution and dollar estimate based on estimate of construction:

1. Design Engineering Fee	\$14,450
2. Bidding and Construction Phase	\$ 2,330
Basic Services Fee	\$ 18,450

- B. Special Services** – includes surveying services to be provided by the Firm. Fees for these services are a fixed dollar amount, as shown below. Said fees shall be invoiced monthly, based on the percentage of services completed.

1. Surveying, Existing Conditions Drawing w/Surveys	\$3,350
2. Construction Inspection	\$5,000
Additional Services Fee	\$ 8,350

Note 1: Engineer shall be responsible for placing bid advertisement in The Facts. The Bid Advertisement must be run once a week for two consecutive weeks, with the first advertisement appearing at least two weeks before the bid opening date. City shall be responsible for paying the cost of publication.

Note 2: Right of way surveys not included. Should right of way be required, an additional fee will be proposed.

**PART IV
TERMS AND CONDITIONS
PROFESSIONAL MANAGEMENT, ENGINEERING AND/OR ARCHITECTURAL
SERVICES**

1. Termination of Contract for Cause. If, through any cause, the Firm shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the firm 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 the Firm 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 the Firm under this Contract shall, at the option of the City, become its property and the Firm shall be entitled to received just and equitable compensation for any work satisfactorily completed hereunder

Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Firm, and the City may withhold any payments to the Firm for the purpose of set-off until such time as the exact amount of damages due the City from the Firm is determined.

2. 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 the Firm. If the Contract is terminated by the City as provided herein, the Firm 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 the Firm, Paragraph 1 hereof relative to termination shall apply.
3. Changes. The City may, from time to time, request changes in the scope of the services of the firm to be performed hereunder. Such changes, including any increase or decrease in the amount of the Firm's compensation, which are mutually agreed upon by the and between the City and the Firm, shall be incorporated in written amendments to this Contract.
4. Personnel.
 - a. The Firm represents that he or she has, or will secure at his own expense, al personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
 - b. All of the services required hereunder will be performed by the Firm or under his/her supervision and all personnel engaged in the work

shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

- c. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. Assignability. The Firm shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto: Provided, however, that claims for money by the firm from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.
 6. Reports and Information. The Firm, 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 matter covered by this Contract.
 7. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this Contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
 8. Copyright. No reports, 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 the Firm.
 9. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances, and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
 10. Equal Employment Opportunity. During the performance of this Contract, the Firm agrees as follows:
 - a. The Firm will not discriminate against any employee or applicant for employment because of race, creed, sex, color, handicap or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, handicap or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices stating the provisions of this nondiscrimination clause.

- b. The Firm will, in all solicitation or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, handicap or national origin.
- c. The Firm will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The Firm will include the provisions a. through c. in every subcontract or purchase order unless exempted.

11. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

12. Section 109 of the Housing and Community Development Act of 1974.

- a. No person in the United States shall be on the grounds of race color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in or owned in substantial part by persons residing in the same area of the project.
- b. The parties to this contract will comply with the provisions of Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. 235, and all applicable rules and orders of the

Department issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

- c. The contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 C.F.R. Part 135.

14. Section 503 Handicapped (if \$2,500 or Over) Affirmative Action for Handicapped Workers.

- a. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- c. In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
 - e. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
15. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract and the Firm shall take appropriate steps to assure compliance.
16. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Firm shall take appropriate steps to assure compliance.
17. Interest of Firm and Employees. The Firm covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area of any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Firm further covenants that in the performance of this Contract, no person having any such interest shall be employed.

