



PROFESSIONAL SERVICES AGREEMENT

For

**Water Distribution System Improvements
Phase 2: Feasibility, Conceptual Design and Final Design**

Sean Schreiber, Water Department Supervisor
City of Sunrise Beach Village
124 Sunrise Drive
Sunrise Beach Village, Texas 78643-9283
325.388.6438

Leigh Thomas, P.E., Regional Manager -Water
HR Green, Inc.
5508 Highway 290 West, Suite 150
Austin, Texas 78735

HR Green Project No: 2303375

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THIS **AGREEMENT** is between the City of Sunrise Beach Village (hereafter “CLIENT”) and HR GREEN, INC. (hereafter “COMPANY”).

1.0 Project Understanding

1.1 General Understanding

The City of Sunrise Beach Village, Texas (SBV) owns and operates a public water supply system that serves a community of approximately 1,030 metered utility connections. The water source for the community is groundwater wells which are disinfected using a chlorine gas system. The treated water is stored in the clear well located at the main water plant. Three (3) high-service pumps supply treated water to the ground storage tank (GST) located at the existing mountain top site. The existing GST is a bolted steel tank with a usable capacity of approximately 102,268 gallons at overflow level (full it has a capacity 113,358 gallons). The elevated position of the mountain top site allows the GST to function as an elevated storage for direct pressure service to the distribution system. In addition, the clear well, located at the water plant site, has a usable capacity of approximately 19,000 gallons. The City is currently experiencing a reported average daily pumped rate of approximately 190,000 gallons, exceeding the available storage capacity. The City is seeking to construct an additional storage tank(s), at a location and capacity to be determined, to facilitate achieving required storage to meet residential demand flows and pressure as well as to meet the Texas Commission on Environmental Quality (TCEQ) requirements.

Based upon available information provided by the City, the distribution system consists of pipes ranging in size from 2-inch to 8-inch, composed of iron (CI), asbestos concrete (AC), and poly-vinyl chloride (PVC) materials, and ranging in age from 1960’s era to the present, all based upon available records and system information. Due to aging infrastructure and material deterioration, the City is experiencing pipe leaks and breaks/failures and seeks to initiate targeted pipeline replacement projects to minimize the loss of treated water and improve water system distribution efficiency through pipeline upgrades (size and material). Proposed system improvements will be planned and designed in accordance with Texas Administrative Code (TAC) Title 30 Chapter 290 – Public Drinking Water, as regulated by TCEQ.

The City sought qualifications from interested parties and ultimately contracted with HR Green (HRG), a full-service engineering and consulting firm, with local office in Austin, Texas. With over 110 years of service to municipal clients and more than 40 years’ operating in the State of Texas, HR Green is well-versed in water tanks and water distribution system improvements.

Funding for this project is a combination of American Rescue Plan Act (ARPA) funds, administered by Llano County, and City of Sunrise matching and additional funds. An Interlocal Agreement between Llano County and Sunrise Beach Village was executed November 28, 2022, related to the distribution of the funds, which commenced on December 1, 2022, and is in full force and effect to September 30, 2024, with an option to extend in one-year terms upon written agreement in the event the work is not completed by September 30, 2024.

This work is being performed in phases to allow for proper system planning for design and construction phases. The first phase focused on developing a map (electronic) of the water

system, modeling the existing water system, evaluating future demands, and concluded with a prioritized plan for water system improvements.

In the second phase, the CLIENT is requesting assistance to perform a feasibility study of storage and water distribution needs associated with the existing Ground Storage Tank (GST) infrastructure as identified in Phase 1 services, followed by design and bidding services for identified storage, pumping, and distribution system improvements in accordance with TCEQ requirements (based upon improvements identified in Phase 1, reference map exhibit, and verified in Phase 2).

In the second phase, the COMPANY will utilize the hydraulic model of the CLIENT'S water distribution system developed in Phase 1, apply field data obtained in Phase 2 services to calibrate the existing model, and perform an Extended Period Simulation (EPS). An EPS produces results based on changing conditions (i.e., tanks filling or draining, pumps turning off or on, etc.) over a specified time interval. The EPS represents a “real-life” analysis of the system by analyzing the model dynamically to evaluate system needs based upon modeled scenarios for current and future system demands. The results of the EPS will verify and/or modify current and future system needs identified in Phase 1.

The work will be performed in accordance with the outlined scope of service at the discretion of the CLIENT.

1.2 Design Criteria/Assumptions

- Professional services and evaluations performed will be in accordance with local, state, and federal standards and requirements.
- Tasks will be performed in accordance with general industry water distribution standards and methods.
- The project will follow the Texas Commission on Environmental Quality's (TCEQ) TAC Chapter 290 Design Standards, American Water Works Association (AWWA) standards, and International Fire Code (IFC) requirements.
- All water distribution facilities and appurtenances will be located on City-owned land and City right-of-way or existing easements. If a new site is required to meet the required storage requirements, the City will facilitate the land and easement acquisitions required.
- All data and system inventory applied in the study will be provided to the COMPANY by the CLIENT and/or those affiliated with and performing services for the CLIENT.
- The project work to be bid for construction is anticipated to include the following improvements:
 - Water Treatment Plant site: High service pumping, piping, valving and associated electrical and SCADA improvements to provide sufficient pumping capacity to existing GST. No building modifications are anticipated. Incorporate existing backup power generation facilities or provide new larger backup power generator facilities if deemed required to meet the needs of the larger pumping capacity. Required modifications to the existing high service pumping station will be determined during Phase 1 (see Part 2).
 - New Storage Tank(s): Sitework, grading, yard piping, new water tank(s), and associated electrical and SCADA improvements. New storage is anticipated to be provided by two (2) new larger clear wells located at the existing WTP site and are anticipated to replace the existing fiberglass clearwell. New larger

- capacity clear wells at the existing WTP site along with the capacity of the existing GST are anticipated to meet TCEQ requirements.
- Booster Pumping Station at existing GST site: Addition of a packaged booster pumping station and associated site improvements to increase pressures along Mountain Top Road by creation of a new isolated High Pressure Zone. Booster pumping station is anticipated to be a premanufactured pumping station with a building. The building will provide for protection of the electrical equipment and other components from weather elements.
 - Water main and valving improvements: Anticipated 8,958 linear foot (LF) of water main piping and valving improvements. Improvement location and sizing shall be determined during Phase 1 (see Part 2).
 - Additional water main to connect new Booster Pumping Station to the existing 2-inch main along Mountain Top Road (estimated at 1,280 LF of 4-inch water main. Length of pipe is dependent upon connection points.
- The new required storage tank volume is expected to be of a size that the existing GST site may not be large enough to build the proposed larger size tank. The existing site seems to not have sufficient space for construction operations required to construct the tank, nor is the access road sufficient for safe and reliable construction equipment and material access. It is therefore assumed that the new storage would need to be placed at a new site. A site separate from the existing GST site and WTP would be feasible but may increase complexity of operations and may require a new separate pumping station. Therefore, it is anticipated that installing two new larger clear wells at the existing WTP site would not increase the complexity of operations, would utilize the existing high service pumping station, would increase redundancy and would be able to meet TCEQ requirements. The new clear wells would also allow replacement of the existing and aging fiberglass clear well constructed in 1999.
 - Due to high elevations along Mountain Top Road, it is anticipated that water main improvements alone won't resolve the low pressures. Therefore, it is anticipated that a separate High Pressure Zone will need to be implemented to increase pressures for customers located along Mountain Top Road. Implementing this separate pressure zone will allow greater flexibility with operating at lower water elevations within the existing GST. Requirements of the High Pressure Zone will be determined during Phase 1 (see Part 2).
 - Only TCEQ permitting is anticipated and included in the scope.
 - It is anticipated that no contaminated soils will be encountered.
 - No environmental assessment is included.
 - A threatened and endangered species assessment is not included.
 - Wetland delineation and mitigation is not included.
 - A historic and cultural assessment is not anticipated or included. If wetlands are found, this may be triggered.
 - US Army Corp permitting is not anticipated or included. If wetlands are found, this may be triggered.
 - COMPANY will provide all meeting agendas, handouts, presentation materials and minutes. Project status meetings may also include presentations regarding the project to CLIENT staff, council, and the public at the discretion of the CLIENT's Project Team.
 - SCADA integration shall be done by City's preferred system integrator.

- Subsurface utility exploration (SUE), Geotechnical services, and Topographical Surveying work is included as an additional service as a maximum allowance and dependent upon locations for construction selected in the feasibility study and conceptual design.

2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

Phase I – Feasibility Study & Conceptual Design

Preliminary and General Work

- Project Initiation - Develop contract, work plan, and budget. Coordinate with Client staff and establish project schedule.
- Provide project management through the duration of feasibility study and conceptual design phase which is anticipated to be four (4) months. The COMPANY will prepare and submit for approval, monthly invoices and will be responsible for providing general management, supervision, and coordination of scoped tasks and deliverables as part of this effort.
- Conduct one (1) kick-off meeting with the CLIENT to review the project scope, schedule, fee, and to discuss key elements. This meeting will include a site visit to observe the locations of the existing facilities and to make field observations. The site visit to all water system sites will be completed in the same mobilization.
- Hold internal kickoff meeting with HR Green staff to set project goals, deadlines, and direction.
- Data Gathering: The following information will be requested and obtained from the CLIENT:
 - CLIENT will provide COMPANY with information on property boundaries at the existing WTP and GST sites.
 - Existing easements and easement agreements, title commitments for existing WTP and GST sites, and any other facilities including water mains. CLIENT to provide COMPANY full access to the existing properties.
 - System Operations Data: System pressure data associated with GST levels for multiple daily operating periods to reflect low, average, and peak daily demands.

Feasibility Study and Conceptual Design

Utilizing and applying information obtained from the preliminary phase, COMPANY will prepare a report that includes feasibility study findings, conceptual design criteria, schematic layouts, and exhibits to identify the recommended solution for the CLIENT. Factors that will be applied include:

- Water distribution system hydraulic performance evaluation using the hydraulic model developed in Phase 1 and applying field data obtained through system investigations, and system operations data, to perform an EPS and resultant system analysis and needs verification.
 - A pressure transmitter is anticipated to be installed by City staff on the high service pump discharge header (potentially one could be connected to the existing air release piping) to determine the full system backpressure on the high service pumps pushing water out to the GST, with data applied in the model calibration.

- Location and extents of a separate High Pressure Zone to address low pressures and allow flexibility in operating the existing GST with varying water levels.
- Location and sizing of water main improvements to accommodate increased pumping rates to meet TCEQ requirements while limiting high pressures resulting from hydraulic restrictions within the existing distribution system.
- Location, height, and diameter of additional clear well tanks on the existing WTP taking into account existing site boundaries, existing facilities at the WTP site, and any sequencing needs for construction.
- **Water age** – Water quality is impacted by keeping water in the system fresh. This means turning over the water in the tower and reducing stagnant conditions. Increased water age can lead to deteriorating water quality such as the increased formation of disinfection-by-products (DBPs), nitrification, and loss of disinfection residual. Taste and odor problems can also result from excessive water age. Therefore, operational flexibility with the existing GST must be accommodated. Poor water turnover can have a seriously detrimental effect on distribution system water quality and will be considered in the evaluation.
- **The requirements of the governmental agencies** – Texas Commission on Environmental Quality (TCEQ) requirements will be identified and included in the study report.
- Provide conceptual design for the improvements identified. This phase will identify the required permit and utility coordination required during design phase.
- Provide internal quality assurance and quality control review of deliverables.
- Provide an opinion of the probable cost for all improvements identified.
- Provide recommendations on construction sequencing of the identified improvements.
- Summarize the findings of the feasibility study and conceptual design in a technical memorandum.
- Attend one (1) meeting with CLIENT to review the conceptual design and opinion of probable cost for the improvements, receive feedback from CLIENT, and incorporate changes to finalize the technical report.

Surveying

Coordinate and subcontract with a surveyor to perform the following in accordance with locations identified in the feasibility study:

- Field survey of existing sites. The survey is anticipated to be at two different sites: Water Plant and existing GST site as well as spot checking identified locations associated with areas of concern pertaining to the planned 8,958 LF of water main improvements. Additional water main to connect new Booster Pumping Station to the existing 2-inch main along Mountain Top Road (estimated at 1,280 LF of 4-inch water main may be included, as budget allows.
- Survey may include the location of utility appurtenances, easements, property boundary, and rights-of-way as appropriate for the design elements and construction phase.
- Create a base map using all utility information and elevation data to be used for the design of the proposed improvements as appropriate for the design elements and construction phase.

Geotechnical Engineering

- Coordinate and subcontract with a Geotechnical consultant for the purpose of evaluating the geotechnical conditions at the project site in accordance with locations identified in the feasibility study. Complete borings with geotechnical subconsultant for them to provide recommendations regarding the construction of foundations, and provide general site preparation and earthwork recommendations for identified locations. The Geotechnical subconsultant will prepare an engineering analysis and report sealed by a Geotechnical engineer licensed in Texas.
- The geotechnical report will include the following:
 - Computer generated boring logs with soil stratification based on visual soil classification.
 - Summarized laboratory data.
 - Groundwater levels observed during drilling and sampling.
 - Boring location plan
 - Subsurface exploration procedures
 - Encountered soils conditions.
 - Design recommendation for foundations
 - Estimated settlement of foundations
 - Estimated seismic site classification.
 - Subgrade preparation/earthwork.

Phase 2 – Final Design

- Provide project management throughout the duration of the design phase. The project duration for the design phase service is anticipated to be 12 months. The COMPANY will prepare and submit for approval, monthly invoices and will be responsible for providing general management, supervision, and coordination of scoped tasks and deliverables as part of this effort.
- Project Manager and Project Engineer will conduct one (1) site visit to all facilities where improvements are identified.
- Prepare construction drawings for proposed improvements. Following drawings are anticipated but are subject to change based on the results and recommendations of Phase 1 – Feasibility Study/Conceptual Design. Anticipate 72 sheets to include:
 - General Items – thirteen (13) sheets estimated.
 - Civil Design – thirty-six (36) sheets estimated.
 - Structural Design – five (5) sheets estimated.
 - Process Design – five (5) sheets estimated.
 - Electrical Design – ten (10) sheets estimated.
 - Instrumentation and Controls - three (3) sheets estimated.
- Prepare construction specifications and contract documents. COMPANY's standard specifications and contract documents will be used.
- Prepare an opinion of probable cost for the project at the 60% and 90% complete milestones. Provide a final opinion of probable cost for the project to file with the completed documents.
- Submit 3 electronic copies of the drawings, specifications, contract documents, and opinion of probable cost at the 60% and 90% complete milestones to CLIENT for review.

- Conduct project status meetings with CLIENT to review the 60% and 90% complete documents, discuss content and schedule of project, and receive comments from CLIENT to be incorporated into the contract documents.
- Provide an internal quality assurance and quality control review of final documents.
- Prepare and submit construction permit application documents to the TCEQ for approval.
- Perform utility coordination and conflict resolution tasks as required for proposed improvements.
- Develop a final project schedule for advertisement, bidding, and construction completion.

3.0 Deliverables and Schedules Included in this Agreement.

This schedule (–included in Payment table) was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of the COMPANY.

Summary of Core Task Deliverables:

1. Meeting minutes for CLIENT and COMPANY in-person and virtual meetings in accordance with the project scope of services tasks outlined.
2. All deliverables included in the project scope of services tasks outlined.

Schedule adherence is subject to the terms of this agreement.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this AGREEMENT:

- Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project.
- Services resulting from City's request to evaluate additional Feasibility Study and Report Phase alternative solutions.
- Property boundary research, including subdivision maps, right-of-way widths, property lines, and property ownership information other than readily available property line information from Burnet County.
- Easements, easement appraisals, negotiation of easements with property owners, and payment of easements.
- Environmental assessment or Wetland delineation.
- Stormwater detention design.
- Meetings with local, State, or Federal agencies to discuss the project.
- Public meetings.
- Additional meetings with CLIENT beyond those outlined in the scope.
- Funding and permitting applications to federal, state, and local agencies.
- Maps, plats, deeds, and easement documents.
- Legal services of any kind.
- Testing services and abatement of hazardous materials.

- Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by COMPANY or its design requirements including, but not limited to, changes in size, complexity, CLIENT's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond COMPANY'S control.
- Bid & Construction phase services.

Supplemental services not included in the AGREEMENT can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

As stated herein.

6.0 Client Responsibilities

- Provide information and data requested and as identified in the scope of services.
- Provide personnel knowledgeable about operations and maintenance of facilities to be available for discussions and to answer questions.
- Provide assistance in determining the locations of existing facilities and utilities.
- Pay all permit fees and other required fees associated with the project.
- Review all project deliverable documents submitted by COMPANY and provide all comments back to COMPANY within one week or otherwise as required by the project scope of services and schedule.
- Attend all meetings and hearings as required for the project.
- Provide all legal services as required for the project.
- Appoint a CLIENT'S REPRESENTATIVE with respect to the services to be performed under this agreement. CLIENT'S REPRESENTATIVE shall have complete authority to transmit instructions, receive information, and interpret and define CLIENT'S policies. COMPANY shall be entitled to rely on representations made by CLIENT'S REPRESENTATIVE unless otherwise specified in writing by CLIENT.
- Identify potential activities likely to interfere with ongoing operations and suggest construction sequencing.

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the AGREEMENT is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non-salary expenses directly attributable to the project such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.



7.2 Invoices

Invoices for COMPANY's services shall be submitted on a monthly basis. Invoices shall be due and payable upon receipt. If any invoice is not paid within 30 days, COMPANY may, without waiving any claim or right against the CLIENT, and without liability whatsoever to the CLIENT, suspend or terminate the performance of services. The retainer shall be credited on the final invoice. Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event that any portion of an account remains unpaid 60 days after the billing, COMPANY may institute collection action and the CLIENT shall pay all costs of collection, including reasonable attorneys' fees.

7.3 Extra Services

Any service required but not included as part of this AGREEMENT shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis: **Lump Sum Not to Exceed of \$576,400.00**. The breakdown of basic and additional services is as follows:

Phase	Fee	Estimated Duration
Preliminary and General Work	\$ 18,500.00	1 month
Feasibility Study and Conceptual Design	\$ 99,400.00	4 months
Survey & Geotechnical Services (Allowance)	\$ 172,000.00	2 months
Final Design Phase	\$ 289,500.00	12 months
Total Basic Services	\$ 579,400.00	19 months



8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

8.2 Entire Agreement

This AGREEMENT and its attachments constitute the entire understanding between CLIENT and COMPANY relating to COMPANY's services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this AGREEMENT shall be in writing and signed by the parties to this AGREEMENT. If the CLIENT, its officers, agents, or employees request COMPANY to perform extra services pursuant to this AGREEMENT, CLIENT will pay for the additional services even though an additional written agreement is not issued or signed.

8.3 Time Limit and Commencement of Services

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The services will be commenced immediately upon receipt of this signed AGREEMENT.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this AGREEMENT, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this AGREEMENT upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this AGREEMENT, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CLIENT. Upon receipt of payment in full of all outstanding sums due from the CLIENT, or curing of such other breach which caused the COMPANY to suspend services, the COMPANY shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

8.5 Books and Accounts

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

8.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage, and Professional Liability insurance caused by the negligent performance by COMPANY's employees of the functions and services required under this AGREEMENT.

8.7 Termination or Abandonment

Either party has the option to terminate this AGREEMENT. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this AGREEMENT may be terminated upon seven (7) days' written notice. If any portion of the services is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the services not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for



services performed during such phase shall be based on COMPANY's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse COMPANY for termination costs.

8.8 Waiver

COMPANY's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this AGREEMENT is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this AGREEMENT shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this AGREEMENT shall be made without written consent of the parties to this AGREEMENT.

8.11 Third-Party Beneficiaries

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the COMPANY. The COMPANY's services under this AGREEMENT are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against the COMPANY because of this AGREEMENT or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, sub-consultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this AGREEMENT and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Texas without regard to any conflict of law provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this AGREEMENT or the performance of the services shall be brought in a court of competent jurisdiction in the State of Texas.

8.13 Dispute Resolution

Mediation. In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and COMPANY agree that all disputes between them arising out of or relating to this AGREEMENT shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The CLIENT and COMPANY further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

8.14 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this AGREEMENT, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.15 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of COMPANY. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times.

8.16 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses including attorneys' fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

8.17 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of service. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT's failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.18 Opinion of Probable Construction Cost

As part of the Deliverables, COMPANY may submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of its opinions of cost, and in recognition of that fact, the CLIENT waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.19 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY'S express written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30-day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the

submitted electronic materials shall be subject to separate agreement. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.20 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this AGREEMENT unless indicated in the Scope of Services.

8.21 Force Majeure

The CLIENT agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this AGREEMENT, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; disease epidemic or pandemic; failure of any government agency to act in a timely manner; failure of performance by the CLIENT or the CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

8.22 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and sub-consultants at a construction site, shall relieve the general contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the general contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the general contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the general contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.23 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional services. The compensation to be paid COMPANY for said professional services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold COMPANY, its officers, directors,

employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this AGREEMENT shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.24 Certificate of Merit

The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against COMPANY unless the CLIENT has first provided COMPANY with a written certification executed by an independent design professional currently practicing in the same discipline as COMPANY and licensed in the State in which the claim arises. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to COMPANY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

8.25 Limitation of Liability

In recognition of the relative risks and benefits of the Project to both the CLIENT and the COMPANY, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and sub-consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and sub-consultants shall not exceed \$50,000.00, or the COMPANY'S total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8.26 Design Without Construction Observation

It is agreed that the professional services of COMPANY do not extend to or include the review or site observation of the contractor's work or performance and the CLIENT assumes all responsibility for interpretation of the contract documents and for construction observation. It is further agreed that the CLIENT will defend, indemnify and hold harmless COMPANY from any claim or suit whatsoever, including but not limited to all payments, expenses or costs involved, arising from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. COMPANY agrees to be responsible for its employees' negligent acts, errors or omissions.

8.27 Soliciting Employment

Neither party to this AGREEMENT will solicit an employee of the other nor hire or make an offer of employment to an employee of the other that is working on this PROJECT, without prior written consent of the other party, during the time this AGREEMENT is in effect.

8.28 DGPS Signal Accuracy

Regional RTN, local RTK, or Omnistar Data Service may be interrupted, or the validity of the data changed, by local conditions such as blockage by trees and buildings or radio interference. Published system accuracies

are dependent on the CLIENT'S GPS receiver and CLIENT'S location. The Regional RTN, local RTK, or Omnistar Data Services coverage is approximate and when CLIENT intends to operate on the extremes of the published coverage area, CLIENT is advised to verify the anticipated Data Services performance with vendor prior to use.

8.29 Intellectual Property Ownership of Tendered Materials

COMPANY retains title and full intellectual property ownership of all tendered documents and materials, including without limitation, analysis methods and equations, calculations, print layouts, layer operational definitions, drawings, models, plans, set of tools, etc. All such documents and materials are considered confidential and CLIENT shall not copy such documentation or materials or disclose them to third parties without COMPANY'S prior written consent. CLIENT shall sign COMPANY'S GEOSPATIAL NONDISCLOSURE AGREEMENT and take reasonable precautions to prevent unauthorized access and use of the software and documentation by third parties. To the extent permitted by the COMPANY Geospatial Nondisclosure Agreement and relevant law, CLIENT shall not, nor allow any third party to copy, decompile, disassemble or otherwise reverse engineer the COMPANY'S analysis, reports, maps, or other products, or attempt to do so.

8.30 Data Access

COMPANY makes no warranties or guarantees concerning internet connections or access to data. COMPANY will make efforts to notify internet service provider if made aware of CLIENT connectivity issues. CLIENT GIS data consumed through COMPANY-developed web mapping applications will be inaccessible at times due to planned hardware and software maintenance and, on occasion, due to unexpected technical issues. COMPANY does NOT guarantee CLIENT access to GIS data at all times. COMPANY will endeavor to minimize periods of data inaccessibility while also providing regular database maintenance and updates to CLIENT web mapping applications during contract period. If CLIENT deems the functionality or availability of the COMPANY-developed web mapping applications and associated GIS data is unacceptable, the CLIENT's sole remedy will be to discontinue using the service provided by COMPANY, at which point COMPANY will provide CLIENT with a copy of the data.

8.31 Data Backup and Recovery

COMPANY will create scheduled data backups for the purpose of recovering CLIENT data in the event of data corruption or loss. These measures are taken to safeguard the present state of the GIS data with no intention on the part of the COMPANY to maintain archival versions of the CLIENT GIS data for the purpose of preserving a historical record of CLIENT's GIS data. The backup schedule for the CLIENT GIS data will be concurrent with COMPANY's internal data backups. COMPANY administers the backup schedule in reference to industry practices and recommendations as well as COMPANY's internal operations, and as such, schedules may be adjusted and updated without notice. No point-in-time data recovery is available. CLIENT may not request adjustment to the COMPANY data backup schedule, and COMPANY shall not grant any such request. If CLIENT deems the backup schedule or availability to the database is unacceptable, the CLIENT's sole remedy will be to discontinue using the service provided by COMPANY, at which point COMPANY will provide CLIENT with a copy of their data. If in the event that the CLIENT data needs to be recovered from a backup, COMPANY reserves the right to charge then-current time and materials charges to CLIENT for both the recovery and any rework to get the data back to a current, workable state. If in the event that none of the backups are able to restore CLIENT's database, CLIENT's sole remedy will be to discontinue using the service provided by the COMPANY or pay then-current time and materials charges to COMPANY to re-collect the necessary information and re-load the database.

8.32 Annual Maintenance Renewal Agreement:

CLIENT must purchase a AGOL subscription in order for COMPANY to maintain the CLIENT GIS database and any associated web-mapping applications. Under this AGREEMENT, COMPANY will maintain the CLIENT GIS database and serve as the account administrator for CLIENT's AGOL site for a duration of 365 days, starting upon date of purchase of CLIENT's AGOL subscription. COMPANY will offer CLIENT continued access to the CLIENT GIS database and AGOL web mapping applications after this initial 365-day period through an annual maintenance renewal agreement. The fee associated with this annual maintenance renewal agreement and subsequent annual maintenance renewal agreements will account for labor costs associated with keeping CLIENT GIS applications functional and stable through necessary server-end (i.e. COMPANY-end) hardware and software updates. Separate from this annual maintenance renewal agreement with COMPANY, CLIENT must also renew its ArcGIS Online organizational subscription with ESRI on an annual basis in order to retain access to its web GIS solution.




8.33 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CLIENT is a municipal entity as defined by said Act, and the CLIENT requires project financing information for the services performed under this AGREEMENT, the CLIENT will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CLIENT will rely on the advice of such advisor. A sample letter can be provided to the CLIENT upon request.

This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Services will not begin until COMPANY receives a signed agreement. COMPANY’s services shall be limited to those expressly set forth in this AGREEMENT and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,

HR GREEN, INC.

Approved by: 
Printed/Typed Name: Heath Picken, P.E.
Title: Vice President, Water/Wastewater Date: 5/1/2024

CITY OF SUNRISE BEACH
Accepted by: _____
Printed/Typed Name: _____
Title: _____ Date: _____