

**CITY OF SANDY OAKS, TEXAS**

**ORDINANCE NO. 2022-197**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS SELECTING A MUNICIPAL ENGINEER AND AUTHORIZING EXECUTION OF A CONTRACT.**

**WHEREAS**, the City Council of the City of Sandy Oaks, Texas (the "City") adopted Ordinance 2014-9 which establishes the Office of Municipal Engineer (City Engineer) and provides the procedure for appointment, tenure, compensation, duties, and removal of said officer; and

**WHEREAS**, by Ordinance No. 2018-87, Tom Turk with M&S Engineering ("M&S") was appointed as City Engineer and the City Council approved a contract with M&S for city engineering services; and

**WHEREAS**, since its appointment and execution of the contract, M&S has experienced internal changes and the persons acting as the City Engineer are no longer employed with M&S and therefore the City Council found it necessary to terminate the contract with M&S and remove it as City Engineer and select a new City Engineer; and

**WHEREAS**, the Professional Services Procurement Act provides in procuring engineering services, a governmental entity shall: (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and (2) then attempt to negotiate with that provider a contract at a fair and reasonable price; and

**WHEREAS**, the City Council authorized and the City Clerk published a request for qualifications for a City Engineer, the City Council conducted interviews of candidates and determined 6S Engineering, Inc. ("6S") as the most highly qualified provider of those services on the basis of demonstrated competence and qualifications, and authorized the Mayor to negotiate a contract with 6S; and

**WHEREAS**, the Mayor presented the negotiated contract to the City Council attached hereto as Exhibit "A," and the Council finds the price as fair and reasonable and desires to appoint a designated representative of 6S as City Engineer and approve the contract with 6S;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS:**

**Section 1. Findings of Fact.** That the above recitals are hereby found to be true and correct legislative and factual findings of the City Council of the City and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**Section 2. Selection of City Engineer.** The City Council of the City hereby selects 6S Engineering, Inc. as the most highly qualified provider of engineering services as described in Ordinance 2014-9 to the City.

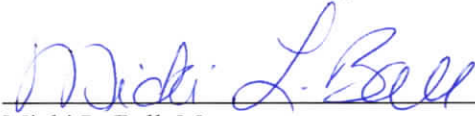
**Section 3. Approval of Contract.** The City Council hereby approves the contract attached hereto as Exhibit "A" and authorizes the Mayor to execute such contract and attach the executed contract to this Ordinance.

**Section 4. Repeal of all conflicting ordinances and resolutions.** All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

**Section 5. Effective Date.** This Ordinance shall take effect immediately from and after the passage and approval of this Ordinance.

**PASSED AND APPROVED** on this 27th day of January, 2022.

**CITY OF SANDY OAKS, TEXAS**

  
Micki L. Ball, Mayor

**ATTEST:**

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Charlotte Rabe, City Clerk

**PROFESSIONAL SERVICE AGREEMENT FOR CITY ENGINEERING SERVICES  
BETWEEN 6S ENGINEERING, INC. AND THE CITY OF SANDY OAKS, TEXAS**

6S Engineering, Inc. ("6S" or "Engineer") and the City of Sandy Oaks, Texas ("City") (collectively referred to as the "parties") enter into this *Professional Services Agreement for City Engineering Services*, which includes the *Engineer's Initial Proposal* and *6S Engineering, Inc. Attachment "A" – Terms and Conditions* attached hereto as Exhibit A and the *Fee/Price Proposal Breakdown for Professional Services* attached hereto as Exhibit B (collectively referred to as the "Agreement") and agree hereto as follows:

**WHEREAS**, the City is a Type A General Law Municipality incorporated and operating under Chapter 22 of the Local Government Code; and

**WHEREAS**, section 22.071 of the Local Government Code provides a municipal engineer as an officer of a Type A General Law Municipality; and

**WHEREAS**, by Ordinance No. 2014-9, the City established the office of City Engineer and provided for the requirements and duties of the City Engineer in such ordinance; and

**WHEREAS**, the City issued a Request for Qualification for City Engineering services ("RFQ"), held a meeting open to the public pursuant to the Texas Open Meetings Act to review responses to the RFQ, and considered the qualifications of engineers who submitted responses to the RFQ; and

**WHEREAS**, the City Council determined that 6S was the most highly qualified provider of engineering services on the basis of demonstrated competence and qualifications and authorized the Mayor to attempt to negotiate with 6S a contract at a fair and reasonable price and such terms of the Agreement are represented;

**NOW, THEREFORE**, for the consideration provided for herein, the parties agree hereto as follows:

**I.  
SERVICES OF ENGINEER**

Engineer is hereby retained and appointed to the office of City Engineer for the City and agrees to perform such services as specified in state law, City Ordinance No. 2014-9 and any other state or local law authorizing duties and services of the City Engineer, as may be amended from time to time, and those authorized by the City Council and agreed to be performed by Engineer.

**II.  
RESPONSIBILITIES OF ENGINEER**

A. Prior to the commencement of any service, Engineer shall submit a Work Authorization for each specific project or service to be performed by Engineer. The general format of a Work Authorization is shown in Exhibit C to this Agreement. Each Work Authorization will indicate the specific services to be performed, the amount of time anticipated to be required for performance of those services, and the anticipated timeframe for the services to be performed.

B. This Agreement is not a commitment by City to Engineer to authorize any Work Authorization.

C. Engineer shall not be obligated to perform any prospective Work Authorization unless and until City and Engineer agree as to the particulars of any specific project or service, including the scope of Engineer's services, time for performance, Engineer's compensation (if compensation conflicts from that set in Exhibit B), and other appropriate matters.

D. Engineer shall use its best efforts, skill, judgment, and abilities in performing the services in an expeditious and timely manner consistent with the applicable professional standards of care and the orderly progress of such services being performed by Engineer. Engineer shall at all times provide sufficient personnel to accomplish any service or project in a timely manner. Engineer shall manage such service to be provided to the City, administer City Engineering services and services authorized under a Work Authorization, and coordinate other professional services as necessary for the complete performance of Engineer's obligations under this Agreement. Engineer shall periodically report the status of any service or project to City as is appropriate to keep City informed as to the status of the work.

E. Engineer shall perform City Engineer services in compliance with all applicable federal, state, and municipal laws, to include building codes and accessibility standards (*e.g.*, Americans with Disabilities Act) and with those of any other entity having jurisdiction over such services. In addition, Engineer shall perform the City Engineer services in a manner consistent with accepted standards for its profession.

F. Engineer shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all City Engineer services and necessary for complete performance of Engineer's obligations under this Agreement. City may, at any time, stop Engineer from performing such services upon giving Engineer written notice.

## II. RESPONSIBILITIES OF CITY

A. The City shall have the responsibilities set forth in this Agreement and as may be specified in each Work Authorization.

B. City shall pay Engineer as set forth in each Work Authorization and pursuant to the fees/price breakdown contained in Exhibit B.

C. City is responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by City to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by City pursuant to any Work Authorization. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. City shall give prompt written notice to Engineer whenever City observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's

services; (2) a description or presence in the City where City Engineering services may be required and a site location; or (3) any relevant, material defect or nonconformance in Engineer's services or the performance of any constructor or contractor of Engineer on behalf of the City.

### **III. TIMES FOR RENDERING SERVICES**

A. The times for completing services or providing deliverables and the effective date will be stated in each Work Authorization. Engineer is authorized to begin rendering services under a Work Authorization as of the effective date of the Work Authorization.

B. If, through no fault of Engineer, such period of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

C. If City authorizes changes in the scope, extent, or character of a specific project, or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

D. City shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in a Work Authorization within the time set forth, as duly adjusted, then City shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

F. With respect to each Work Authorization, the number of construction contracts for work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Work Authorization. If the Work designed or specified by Engineer under a Work Authorization is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime contractors, then the Work Authorization will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the services or work under the construction contracts. If the Work Authorization does not address such sequencing and coordination, then City and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Work Authorization whether or not the work under such contracts is to proceed concurrently.

### **IV. INSURANCE**

Engineer shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Workers Compensation Insurance; in an amount meeting statutory requirements of the State of Texas on all Engineer's employees carrying out the City Engineer services.

B. Automobile Liability Insurance: with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by Engineer or its employees.

C. General Liability Insurance: on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage and for bodily injury and property damage, no less than \$1,000,000. As a minimum, coverage for premises, operations, products, and completed operations shall be \$2,000,000. This coverage must protect the public or any person from injury or property damages sustained by reason of Engineer or its employees providing City Engineer services. The general aggregate must be no less than \$2,000,000.

D. Professional Liability Errors and Omissions Insurance: with limits of liability not less than \$1,000,000 per occurrence covering all work performed by Engineer, its employees, subcontractors, or independent contractors. If this coverage may only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with Engineer continuing to furnish the City certificates of insurance.

E. Subcontractor: in the case of any work sublet, Engineer shall require subcontractors and independent contractors working under the direction of either Engineer or a subcontractor to carry and maintain the same workers compensation and liability insurance required of Engineer.

F. Qualifying Insurance: the insurance required by this Agreement must be written by an insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies. All policies must be written on a "per occurrence basis" and not a "claims made" form.

## V.

### INDEMNIFICATION FOR INJURY AND PERFORMANCE

A. **ENGINEER SHALL PROTECT, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE(S)", FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, LIABILITY, OR DAMAGE OF ANY CHARACTER AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS, CLAIMS, LOSSES, DAMAGES, OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION OF ENGINEER, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS, OR SUBCONTRACTORS, OR ANYONE ELSE UNDER ENGINEER'S, DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY SERVICE PERFORMED AS CITY ENGINEER OR PURSUANT TO ANY WORK AUTHORIZATION, OR FROM CONDITIONS CREATED BY THE**

**PERFORMANCE OR NON-PERFORMANCE OF CITY ENGINEERING SERVICES OR WORK PERFORMED PURSUANT TO A WORK AUTHORIZATION. IN THE EVENT ONE OR MORE OF THE INDEMNITEE IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, ENGINEER SHALL INDEMNIFY INDEMNITEE(S) AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY.**

B. Engineer is not responsible for the actions of another contractor of the City not performing the construction of the improvements covered under this Agreement which Engineer does not exercise direction or control over.

C. Acceptance and approval of any work or final plans by City neither constitutes nor may be deemed a release of this responsibility and liability of Engineer, its officers, employees, servants, agents, or subcontractors, or anyone else under Engineer's, direction and control, for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by City for any defect in designs or documents created by Engineer or its employees, contractor, agents, and consultants for the purposes of performing City Engineer services or services described in any Work Authorization.

#### **VI. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION**

Engineer agrees that it is an independent contractor and not an agent of City, and that Engineer is subject, as an employer, to all applicable unemployment compensation statutes, so as to relieve City of any responsibility or liability from treating Engineer's employees as employees of City for the purpose of keeping records, making reports or payments of unemployment compensation taxes or contributions. **ENGINEER SHALL INDEMNIFY AND HOLD CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF ENGINEER.**

#### **VII. INDEMNIFICATION FOR PERFORMANCE**

**ENGINEER SHALL DEFEND AND INDEMNIFY INDEMNITEES AGAINST AND HOLD CITY AND THE PREMISES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND MANAGEMENT COSTS INCURRED BY ENGINEER IN PERFORMING CITY ENGINEER SERVICES.**

**VIII.**  
**DISCLOSURE OF INTERESTED PARTIES**

A. Engineer hereby certifies that it has filed Form 1295 pursuant to section 2252.908 of the Texas Government Code and shall furnish a copy of such form to the City at the time of execution of this Agreement or certifies that an exception applies to it pursuant to section 2252.908(c) of the Government Code.

B. Engineer hereby agrees to submit a disclosure of interested parties to the City at the time the Engineer submits the signed contract to the City pursuant to section 2252.908(d) of the Texas Government Code in a form prescribed by the Texas Ethics Commission in accordance with section 2252.908(e).

**IX.**  
**ENGINEER CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS**

Engineer hereby confirms that it is not identified by (1) the Texas Comptroller as a company with business operations in Sudan, (2) the Texas State Pension Review Board as a company with business operations in Iran, or (3) the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization or that it is a company the United States government affirmatively declares to be excluded from its federal sanctions regime relating to (1) Sudan, (2) Iran, or (3) foreign terrorist organizations pursuant to Chapter 2252, Subchapter F of the Texas Government Code.

**X.**  
**ENGINEER CERTIFICATION REGARDING BOYCOTTING ISRAEL (IF ENGINEER HAS 10 OR MORE FULL-TIME EMPLOYEES)**

Engineer hereby confirms that it does not boycott Israel and will not boycott Israel during the term of the contract.

**XI.**  
**PUBLIC INFORMATION ACT**

Engineer understands that City is subject to the requirements of the Public Information Act, Texas Government Code Chapter 552 (the "Act"), and may be required to release information or documents pursuant to the Act. Should City receive a written request for information or documents of confidential or proprietary information or trade secret related to Engineer pursuant to the Act, City will provide written notice to Engineer of the request, advise it of its rights under the Act and withhold such information or documents until it receives authorization from Engineer or a ruling or decision from the Texas Attorney General to release or withhold the requested information or documents. This section shall take precedence over any conflicting sections or requirements of the Agreement.

**XII.**  
**MISCELLANIOUS PROVISIONS**

A. Entire Agreement. This Agreement supersedes all prior agreements, written or



oral, between City and Engineer and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. To the extent of any conflict between the terms of this *Professional Service Agreement for City Engineering services between 6S Engineering, Inc. and the City of Sandy Oaks, Texas* and Exhibit A, the terms of this *Professional Service Agreement for City Engineering services between 6S Engineering, Inc. and the City of Sandy Oaks, Texas* will prevail over the conflict in Exhibit A.

C. Assignment. This Agreement is a professional service contract for the services of Engineer and Engineer's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of City. Sale of more than fifty percent (50%) ownership of Engineer will be considered an assignment.

D. Applicable Law. This Agreement shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Bexar County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither City's review, approval, or acceptance of, nor payment for any City Engineering services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Independent Contractor. Engineer agrees that Engineer is engaged as an independent contractor and that City has no responsibility to provide Engineer or its employees with any benefits associated with employee status.

G. Exhibit(s). The following exhibit(s) is attached to this Agreement and are included herein for all purposes:

**Exhibit A:** *Engineer's Initial Proposal and 6S Engineering, Inc. Attachment "A" – Terms and Conditions*

**Exhibit B:** *Fee/Price Proposal Breakdown for Professional Services*

**Exhibit C:** Work Authorization (Sample Form)

H. Effective Date. This Agreement is effective after both parties have executed this Agreement as established below by the later date of execution.

I. Notices and Authority. All notices required under this Agreement shall be sent to the following:

To the City:  
City of Sandy Oaks

Attn: Mayor  
P.O. Box 828  
22870 Priest Road  
Sandy Oaks, Texas 78112  
mball@cityofsandyoaks.com  
cityclerk@cityofsandyoaks.com

To Engineer Firm:

6S Engineering, Inc.  
Attn: Rachelle A. Swaim  
8405 Coughran Rd.  
Pleasanton, Texas 78064  
Email: rachelleswaim@6s-engineering.com

Engineer acknowledges that only the Mayor, or his/her designee, has authority to represent the City or bind the City under this Agreement as authorized by the City Council. By executing this Agreement, signatory for Engineer, hereby confirms he/she is an authorized representative of Engineer with permission and authority to sign this Agreement on behalf of Engineer and bind Engineer to this Agreement.

**ACCEPT AND AGREED:**

By: Rachelle A. Swaim  
Rachelle A. Swaim, President  
6S Engineering, Inc.

Date: 01/06/2022

By: Charles Fillinger  
~~Micki Ball~~ Charles Fillinger, Mayor  
City of Sandy Oaks

Date: 02/22/22

ATTEST:

Charlotte Rabe  
Charlotte Rabe, City Clerk  
City of Sandy Oaks