

# Sample Contract

## PART I AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the CITY OF \_\_\_\_\_, hereinafter called the "City", acting herein by \_\_\_\_\_ hereunto duly authorized, and \_\_\_\_\_ hereinafter called "Firm," acting herein by \_\_\_\_\_.

WITNESSETH THAT:

WHEREAS, the City of \_\_\_\_\_ desires to implement a \_\_\_\_\_ under the general direction of the Texas Community Development Program; and Whereas the City desires to engage \_\_\_\_\_ to render certain services in connection with its \_\_\_\_\_.

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.

2. Time of Performance - The services of \_\_\_\_\_ shall commence on \_\_\_\_\_ . In any event, all of the services required and performed hereunder shall be completed no later than \_\_\_\_\_.

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 \_\_\_\_\_ by the City and its agencies. No charge will be made to \_\_\_\_\_ for such information and the City and its agencies will cooperate with \_\_\_\_\_ 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 not exceed \$\_\_\_\_\_. Payment to (person/firm) shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Contract.

5. Indemnification - \_\_\_\_\_ 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 \_\_\_\_\_ County, Texas.

b. This Agreement shall be binding upon and insure 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 any case 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 not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. 2012

- 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 attorney's 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 an 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 \_\_\_\_\_ FIRM: \_\_\_\_\_

BY: \_\_\_\_\_ BY: \_\_\_\_\_

(Mayor)

**NOTE:** This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification.

# Sample Contract

## PART II

### ENGINEERING/ARCHITECTURAL/SURVEYOR

#### PROFESSIONAL SCOPE OF SERVICES

The Engineering Firm shall render the following professional services necessary for the development of the project:

#### SCOPE OF SERVICES

1. Attend preliminary conferences with the Grant Recipient regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/ROWS for the CDBG project and, if applicable, furnish to the Grant Recipient:
  - Name and address of property owners;
  - Legal description of parcels to be acquired; and
  - 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 Grant Recipient providing or obtaining other services such as auger borings, 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 Grant Recipient's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare a preliminary engineering/architectural study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Grant Recipient, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Engineer's recommendations; to be completed within \_\_\_\_\_ days of contract execution.
6. Furnish the Grant Recipient copies of the preliminary report, if applicable (additional copies will be furnished to the Grant Recipient at direct cost of reproduction).
7. Furnish the Grant Recipient a written monthly status report at least seven (7) days prior to the regularly scheduled council/commissioner's court meeting until the project is closed by TDA. The format for this report is attached to this Agreement as Part IV.
8. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
9. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Engineering Firm shall also furnish to the Grant Recipient an updated written Estimate of Probable Costs for the Project.
10. Make 10-day call to confirm prevailing wage decision..
11. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
12. Conduct bid opening and prepare minutes.
13. Tabulate, analyze, and review bids for completeness and accuracy.
14. Accomplish Construction Contractor eligibility verification.
15. Conduct pre-construction conference and prepare copy of report/minutes.
16. Issue Labor Standards Record to TDA and Notice to Proceed to construction contractor.

17. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
18. Design for access by persons with disabilities to facilities to be used by the public in accordance with Public Law 504.
19. Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond that have TDA approval.
20. Make periodic visits, no less than every 30 days during the construction period, to the site to observe the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract.
21. Consult with and advise the Grant Recipient during construction; issue to contractors all instructions requested by the Grant Recipient; and prepare routine change orders if required, at no charge for engineering services to the Grant Recipient when the change order is required to correct errors or omissions by the Engineer; provide price analysis for change orders; process change orders approved by Grant Recipient and the project engineer and submit to TDA for approval prior to execution with the construction contractor.
22. 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).
23. Resolve all payment requests within 14 days of receipt of signed pay request from the Construction Contractor.
24. Based on the Engineer's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the Grant Recipient, based on such 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.
25. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the Grant Recipient and approval by TDA, unless State or local law provides otherwise.
26. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
27. Conduct interim/final inspections.
28. Revise contract drawings to show the work as actually constructed, and furnish the Grant Recipient with a set of "record drawings" plans.
29. The Engineer will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided 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 owner. 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 with the seal has been provided to the owner. 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 provided to the owner in written form.

## SUBCONTRACTS

1. No work under this Contract shall be subcontracted by Engineer without prior approval, in writing, from the Grant Recipient.
2. The Engineer shall, prior to proceeding with the work, notify Grant Recipient 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 any time during progress of the work, the Grant Recipient determines that any subcontractor is incompetent or undesirable, the Grant Recipient will notify the Engineer who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract.

Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Contract shall create any contractual relation between any subcontractor and Grant Recipient.

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.C 7606], Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 31.35 and 31.36), 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 TDA 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 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 Grant Recipient 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 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.
  - Davis-Bacon Act – prime contractor contracts in excess of \$2,000.
  - Section 103 and 107 of the Contract Work Hours and Safety Standards Act – contracts in excess of \$2,000.
  - 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 Grant Recipient, TDA, 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 Grant Recipient 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 represents that services provided under this Contract shall be performed within the limits prescribed by the Grant Recipient 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 Grant Recipient and at the Engineer's expense if the deficiency is due to Engineer's negligence. The Grant Recipient 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 Grant Recipient under applicable state or federal law.
4. The Engineer agrees to and shall hold harmless the Grant Recipient, 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.

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**PART III -- PAYMENT SCHEDULE**  
**ENGINEERING/ARCHITECTURAL/SURVEYOR**  
**PROFESSIONAL SERVICES**

City/County shall reimburse (person/firm) for basic engineering services provided upon completion of the following project milestones per the following percentages of the maximum contract amount: <b>Milestone</b>	<b>% of Contract Fee</b>
	20%
• Approval of Preliminary Engineering Plans and Specifications by Grant Recipient.	
	30%
• Approval of Plans and Specifications by Regulatory Agency(ies).	
	20%
• Completion of bid advertisement and contract award.	
	10%
• Completion of construction staking.	
	10%
• Completion of Final Closeout Assessment and submittal of “As Builts” to Grant Recipient.	
	10%
• Completion of final inspection and acceptance by the Grant Recipient.	
total	100%