

**EXHIBIT B**  
**City of Seguin, Texas**  
**Terms and Conditions for General Professional Services Agreements**

**1. Standards of Performance**

(a) In performing all services under this Agreement, the Consultant will use that degree of care and skill ordinarily exercised for similar projects by professional consulting firms who possess special expertise in the types of services involved under this Agreement.

(b) Any provisions in this Agreement pertaining to the City's review, approval and /or acceptance of written materials prepared by the Consultant and/or its subconsultants in connection with this Agreement will not diminish the Consultant's responsibility for the materials.

(c) The Consultant will perform all of its services in coordination with the City. The Consultant will advise the City of data and information the Consultant needs to perform its services, and the Consultant will meet with City representatives at mutually convenient times to assemble this data and information.

(d) In performing all services under this Agreement, the Consultant will comply with all local, state and federal laws.

**2. City's Responsibilities**

(a) The City will provide information to the Consultant regarding the City's requirements for the Consultant's services under this Agreement. The City will furnish the Consultant with copies of data and information in the City's possession needed by the Consultant, at the Consultant's request.

(b) The City will designate an authorized representative to act on the City's behalf with respect to this Agreement. The City will examine documents and information submitted by the Consultant, and promptly render responses to the Consultant on issues requiring a decision by the City.

**3. Consultant's Records**

(a) All expense records of the Consultant related to

this Agreement will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.

(b) The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

(c) The Consultant will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

**4. Ownership and Use of Documents**

(a) All documents prepared by the Consultant in connection with this Agreement will become the property of the City whether any project related to this Agreement is executed or not.

(b) The Consultant will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years, except that in the event the Consultant goes out of business during that period, it will turn over to the City all of its records relating to the Project for retention by the City.

**5. Term; Termination of Agreement**

(a) The term of this Agreement begins upon the date of the letter agreement, and will end upon the Consultant's completion, and the City's acceptance, of all services described in this Agreement.

(b) This Agreement may be terminated by either party upon 15 days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

(c) This Agreement may be terminated at will by the City upon at least 15 days prior written notice to the Consultant.

(d) In the event of termination as provided in this Section, the Consultant will be compensated for all services performed to the termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Consultant's delivering to the City all information and materials developed or accumulated by the Consultant in performing the services described in this Agreement, whether completed or in progress. The expense of the reproduction of these items will be borne by the City.

## **6. Indemnity and Insurance**

(a) The Consultant will hold harmless, indemnify and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

(b) The Consultant will procure and maintain at its expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Consultant or its agents, subcontractors or employees. Before commencing the work the Consultant will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that Consultant has complied with this paragraph. All certificates will provide that the policy will not be canceled until at least 30 days written notice has been given to the City, and will name the City as an additional insured on all coverages except workers' compensation. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$500,000 for each occurrence and \$500,000 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than \$250,000 for injuries to any one person, \$500,000 on account of any one accident and in an amount of not less than \$250,000 for property damage.

(c) The stated limits of insurance required by this Paragraph are **minimum only**--they do not limit the Consultant's indemnity obligation, and it will be the Consultant's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Consultant from compliance with these requirements.

## **7. No Waiver of Immunity**

The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

## **8. Remedies; No Waiver**

In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Consultant will not waive the City's ability to enforce the Agreement after that time.

## **9. Miscellaneous Provisions**

(a) This Agreement is governed by the law of the State of Texas. Exclusive venue for any dispute arising under this Agreement is in Guadalupe County, Texas.

(b) As to all acts or failures to act by either party to

this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act or failure to act.

(c) The Consultant agrees not to use funds received by it under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

(d) The Consultant hereby affirms that Consultant and Consultant's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the Seguin City Code will not be considered as a valuable gift for the purposes of this Agreement.

(e) In performing the services required under this Agreement, the Consultant will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Consultant agrees not to engage in employment practices which have the purpose or effect of discriminating against employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant may be regarded as a default of the Consultant of the Agreement.

(f) All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

(g) Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

(h) All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

(i) The City of Seguin is governed by the Texas Public Information Act ( the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Consultant shall not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

(j) In the event that the performance by either the City or the Consultant of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

(k) The City and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Consultant may not assign, sublet or transfer any interest in this Agreement without the written consent of the other.

(l) This Agreement represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements either written or oral. Except as to a change in the scope of services, the compensation for which does not exceed \$25,000.00, this Agreement may be amended only by written instrument approved by the City's governing body and signed by both the City and the Consultant.

(m) Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

(n) In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Agreement, these Terms and Conditions will govern and control.