



RESOLUTION NO. 20130924-13

**A CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES WITH
HAYES ENGINEERING**


WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, Hayes Engineering has the necessary experience and expertise to submit design and engineering services to TexAmericas Center regarding relevant services; and

WHEREAS, TexAmericas Center has determined this firm to be qualified to perform these services;

NOW, THEREFORE, BE IT RESOLVED that the Executive Director/CEO shall be and he is here by authorized to enter into a professional service contract with Hayes Engineering to provide engineering and design services for TexAmericas Center on terms substantially the same as attached hereto.

PASSED AND APPROVED THIS 24th day of September, 2013


Denis Washington, Chairman of the Board

ATTEST:


Mike Carter, Secretary-Treasurer

ATTACHED: FY 14 Professional Services Agreement (Engineer)



**PROFESSIONAL SERVICES AGREEMENT
(Engineer)**

This Agreement between TexAmericas Center (hereinafter referred to as "Client") and Hayes Engineering, Inc. (hereinafter referred to as "Engineer") is effective as of the 24th day of September, 2013. The parties agree as follows:

WHEREAS, the Client desires to engage ENGINEER to provide general civil engineering and land surveying services; and

WHEREAS, ENGINEER desires to render certain services as described in authorized work orders as may be hereafter issued and has the experience and staff to perform those services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Services. The Client hereby agrees to engage ENGINEER, and ENGINEER hereby agrees to perform certain services for the Client as agreed upon from time to time. Such services shall be set forth in individual work orders as may be hereafter authorized in writing by the Client and accepted by ENGINEER. The terms and conditions of this Agreement shall apply to each Work Order, except to the extent expressly modified by the Work Order.

Section 2. Client's Responsibilities. The Client agrees to provide ENGINEER with all existing data, plans, and other information in the Client's possession which are necessary for the performance of Services as well as right of entry for ENGINEER's personnel and all necessary equipment to the site(s). The Client further agrees to provide any additional data, plans, or other information as may be specified in authorized work orders.

Section 3. Standard of Care and Warranty. ENGINEER agrees that its Services will be performed with that level of professional care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and circumstances. **NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE.** ENGINEER will not be responsible for the interpretation or use by persons or entities other than Client of data developed by ENGINEER.

Section 4. Safety. ENGINEER is responsible for the safety on site of its own employees. This provision shall not be construed to relieve Client or any of its vendors, or other contractors from their responsibility for maintaining a safe worksite. Neither the professional services of ENGINEER, nor the presence of ENGINEER's employees and subcontractors shall be construed to imply ENGINEER has any responsibility for any activities on site performed by personnel other than ENGINEER's employees or subcontractors.



Section 5. Time of Performance. ENGINEER agrees to perform the Services within schedules as set forth in authorized work orders. ENGINEER shall not be responsible for delays in the work caused by Client or its agents, consultants, or contractors. Standby or non-productive time for delays in our work caused by Client will be charged as work time unless provided for as a separate item in the work order.

Section 6. Compensation. For ENGINEER's performance and completion of all services, Client shall compensate as specified in authorized work orders. Such rates include labor, overhead, expenses, and profit.

Section 7. Payment. ENGINEER shall invoice Client for Services performed on a monthly basis. Each invoice is due on presentation, is payable in the Bowie County, Texas, and is past due thirty (30) days from invoice date. Client agrees to pay interest equal to one percent (1%) plus the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year, or the next day thereafter if July 1 falls on a Saturday or Sunday. Invoices for Services performed on a time-and-materials basis will be submitted showing labor (hours worked) and total expenses. If requested by the Client, documentation will be provided by ENGINEER at the cost of providing such documentation including labor and copying costs. Any attorneys' fees, court costs, collection fees or other costs incurred in collecting any uncontested delinquent amounts shall be paid by Client.

Payment of the fees provided for in this Contract are subject to the availability of annual appropriations by the Client, which is a political subdivision of the State of Texas. Client shall use its best efforts to obtain and appropriate funds for payment of the sums due ENGINEER under this Agreement.

Section 8. Notices. Communications from the Client shall be to ENGINEER's designated project manager or principal-in-charge of the work. Oral communications shall be confirmed in writing. Communications from ENGINEER to Client shall be to Client's Executive Director.

Section 9. Cost Estimates. All cost estimates provided in association with services, either prior to accomplishment or during same, are based on a scope of services provided with same. It is expressly understood by Client and ENGINEER that any change to said scope of services, may directly impact the cost of same. In the event that significant changes in scope are requested by Client, ENGINEER shall notify Client in writing of the potential increase in costs associated with same and provide additional work orders as needed to address same.

Section 10. Confidentiality. ENGINEER shall maintain as confidential and not disclose to others without Client's prior written consent, all information obtained from Client, not otherwise previously known to ENGINEER in the public domain, as Client expressly designates in writing to be "Confidential." The provisions of this paragraph shall not apply to information in whatever form

which (i) is published or comes into the public domain through no fault of ENGINEER, (ii) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (iii) is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

Section 11. Independent Contractor. ENGINEER's relationship with the Client under this Agreement shall be that of independent contractor. The employees, methods, equipment, and facilities used by ENGINEER shall at all times be under its exclusive direction and control, and the Client shall not exercise control over ENGINEER except insofar as may be necessary to ensure performance and compliance with this Agreement.

Section 12. Insurance. ENGINEER agrees to purchase and maintain at its own expense the following insurance in amounts not less than specified herein:

<u>TYPE OF INSURANCE</u>	<u>COVERAGE AMOUNTS</u>
Worker's Compensation Insurance	statutory
Employer Liability Insurance	\$1,000,000.00
General Liability Insurance	\$1,000,000.00 per occurrence/per aggregate
Automobile Liability Insurance	\$1,000,000.00 per occurrence/per aggregate
Professional Liability Insurance	\$1,000,000.00 per occurrence/per aggregate

Certificates of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, ENGINEER agrees to reimburse the Client for any damages sustained by the client which are covered by ENGINEER's insurance to the extent of the limitations and exclusions contained within said insurance policies.

Client agrees to purchase and maintain at its own expense, general liability insurance in an amount necessary to provide coverage for sums up to the limit of Client's liability under the Texas Tort Claims Act.

Section 13. Indemnification. ENGINEER shall defend, indemnify, and hold the Client harmless from and against any claim asserted by any person or entity (other than an officer, director, employee or agent of Client) arising out of (i) ENGINEER's negligence or (ii) ENGINEER's breach of any obligation or responsibility imposed on it by the provisions of this Agreement, subject to the limitations and exclusions contained herein in Sections 12.

Section 14. Provided ENGINEER has been paid for its services, Client shall have the right to use the documents, photographs, drawings and specifications resulting from ENGINEER'S services. Reuse of any such materials by Client on any other project without the written authorization of ENGINEER shall be at Client's sole risk. ENGINEER shall have the right to

retain copies of all such information and materials.

Section 15. Disputes. If a dispute arises relating to the performance of the Services covered by this Agreement, and legal or other costs are incurred, the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, court costs, attorney's fees, and other claim-related expenses.

Section 16. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination, ENGINEER shall be paid for services performed prior to the termination notice date plus reasonable termination expenses, including the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

Section 17. No Waiver. The failure of a party to enforce strictly any provision of this Agreement shall not be deemed to act as a waiver of any provision, including the provision not so enforced.

Section 18. Choice of Law. This Agreement is deemed to be made under and shall be construed according to the laws of the State of Texas. Venue for any litigation arising out of this Agreement shall be in the District Court of Bowie County, Texas.

Section 19. Successors and Assignments. The Client and ENGINEER each binds itself and its successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; provided, however, neither party may assign this agreement or its duties and obligations hereunder without the prior written consent of the other party.

Section 20. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 21. Entire Agreement. This Agreement, including work orders authorized hereunder, constitutes the entire agreement between the parties hereto and it supersedes all prior or contemporaneous agreements, whether oral or written, with respect to the subject matter hereof. In case of conflict or inconsistency between this Agreement and any other contract documents, this Agreement shall control. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound. This Agreement is effective as of the date referenced above.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in two counterparts (each of which is an original) by their duly authorized representatives as of the date shown below.

TEXAMERICAS CENTER

HAYES ENGINEERING, INC.

By: Will V. Cook

By: [Signature]

Title: Executive Director

Title: President/CEO

Date: 9/24/13

Date: 9-13-13