

**CITY OF SUGAR LAND**  
**STANDARD CONTRACT FOR CIVIL ENGINEERING CONSTRUCTION PROJECTS**  
(Rev. 12-8-15)

This City of Sugar Land Standard Contract for Civil Engineering Construction Projects (Contract) is made between the City of Sugar Land, Texas (City), and the Contractor. The City and the Contractor agree to the terms and conditions of this Contract, which consists of the following:

- I. Signatures
- II. Summary of Contract Terms
- III. Standard Contractual Provisions
- IV. Contract Documents

**I. Signatures.** By signing below, the parties agree to the terms of this Contract:

**CITY OF SUGAR LAND**

**By:**

**Name:**

**Title:**

**Date:**

**CONTRACTOR: NBG Constructors, Inc**

**By:**

**Name: David Boehm**

**Title: President**

**Date: 1/22/2018**

**II. Summary of Contract Terms.**

Project: Brooks Lake Diversion/ Amil Gate Replacement Project; CIP SW1401

Contractor: NBG Constructors Inc.

Name of Engineering Firm, if any: RPS | Infrastructure (Formerly Klotz Associates)

Name of Owner's Project Manager: Guillermo Salcedo, P.E. CFM.

Total Amount Bid: \$3,759,018.00

Alternate Bid Item Nos.: n/a

Total Alternate Bid Items Amount: \$ n/a

Contract Price (Total Amount Bid + Alternates): \$3,759,018.00 as may be adjusted by Change Orders

Effective Date of Contract: On the latest date of the dates executed by both parties

Date to Begin Work: Date specified in Notice to Proceed

Substantial Completion: Contractor must achieve Substantial Completion within 330 Calendar Days from

date specified in Notice to Proceed, as the time may be adjusted by Change Order

Final Completion: Contractor must complete the Punch List within 30 Calendar Days from Substantial Completion

Liquidated Damage Amount for Failure to Meet Time for Substantial Completion: \$1,000 per Calendar Day

Liquidated Damage Amount for Failure to Complete Punch List Items by Time for Final Completion: \$50.00 per Calendar Day

### **III. Standard Contractual Provisions.**

#### **A. Definitions.**

*Contract* means this Standard Contract for Civil Engineering Construction Projects, comprised of the:

1. Signatures (Section I),
2. Summary of Contract Terms (Section II),
3. Standard Contractual Provisions (Section III), and
4. Contract Documents (listed in Section IV).

*Project* means the project identified in Section II above.

*Work* means all labor, materials, equipment, and services necessary to construct, erect, install, equip and complete the Project.

B. Work. The Contractor will complete the Work according to the Contract requirements.

C. Payment. Subject to the terms of the Contract, the City will pay the Contractor the sum(s) as shown in Section II above plus any additional sums approved by Change Order. All payments to be made by the City to Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to other requirements of this Contract and Chapter 2251 of the Texas Government Code.

D. Law Governing and Venue. Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Fort Bend County, Texas.

E. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

F. Independent Contractor. Contractor will perform the Work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Contractor or Contractor's officers or employees in the means, methods, or details of the Work to be performed by Contractor under this Contract. The Contractor will perform the Work in a workmanlike manner and take proper care and precautions to insure the safety of Contractor's officers, employees, and agents.

G. Labor Classification and Minimum Wage Scale. The Contractor must comply with Chapter 2258 of the Texas Government Code. This statute, among other things, requires all contractors and subcontractors performing public works contracts for a municipality to:

1. Pay the prevailing wage rate as determined by the municipality, a copy of which is attached as the Labor Classification and Minimum Wage Scale;
2. Keep records of the name and occupation of each worker, laborer and mechanic employed by them to work on the Project and the actual per diem wages paid to each; and
3. Forfeit, as a penalty, sixty dollars per day for each laborer, worker, or mechanic who is not paid the stipulated wage for the type of work performed by him as shown in the attached Labor Classification and Minimum Wage Scale. The City is authorized to withhold the penalty amount from the Contractor's payment, as provided in the statute.

H. Compliance with Laws. The Contractor will comply with all laws and regulations applicable to its business operations and the Work. The Contractor represents that it has complied with the federal immigration and citizenship laws.

I. Severability. The provisions of this Agreement are severable and the invalidity of any part of this Agreement will not affect the validity of the remainder of this Agreement.

J. Cumulative Remedies. The rights and remedies provided in this Contract, or otherwise under applicable laws, shall be cumulative and the exercise of any particular right or remedy shall not preclude the exercise of any other right or remedies in addition to, or as an alternate of, the right or remedy.

K. Compliance with CenterPoint Houston Electric, LLC's Tariff. The Contractor must comply with CenterPoint Houston Electric, LLC's or its successor's (CenterPoint) most current tariff filed with the Texas Public Utility Commission. If electrical facilities are installed that require indemnity under the tariff, **CONTRACTOR ASSUMES THE RISK OF AND SHALL INDEMNIFY THE CITY, CENTERPOINT HOUSTON ELECTRIC, LLC (CENTERPOINT), THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AGAINST DAMAGES FOR INJURIES OR DEATH TO PERSONS OR LOSS TO THE CITY OF SUGAR LAND'S (CITY) PROPERTY OR TO PROPERTY OF CENTERPOINT WHEN OCCASIONED BY ACTIVITIES OF THE CITY, CONTRACTOR, OR THIRD PARTIES ON THE CITY'S PREMISES, RESULTING FROM THE INSTALLATION, EXISTENCE, REPLACEMENT OR REPAIR OF CENTERPOINT'S UNDERGROUND FACILITIES, AND AS FURTHER PROVIDED IN THE TERMS OF "LIMITS ON LIABILITY", SECTION 5.2 OF CENTERPOINT'S TARIFF.**

L. Railroad Requirements. If this Project involves work on or use of Union Pacific Railroad Company's property, whether through construction of an at-grade crossing, installation of utilities, or other City use, the Contractor must comply with the Railroad's requirements, the City's agreement with the Railroad, and the applicable federal, state and local laws regulations and enactment affecting the Work. **ALSO, CONTRACTOR RELEASES, DEFENDS AND INDEMNIFIES UNION PACIFIC RAILROAD COMPANY (RAILROAD) AND THE CITY FROM AND AGAINST ANY LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, COST, OR EXPENSE INCURRED BY ANY PERSON, INCLUDING, WITHOUT LIMITATION, THE CONTRACTOR'S AND THE CITY OF SUGAR LAND'S PROPERTY OR EQUIPMENT (COLLECTIVELY, THE "LOSS") THAT ARISES FROM THE PRESENCE OR ACTIVITIES OF CONTRACTOR'S AND CITY'S EMPLOYEES ON RAILROAD'S PROPERTY, EXCEPT TO THE EXTENT THAT ANY LOSS IS CAUSED BY THE SOLE DIRECT**

**NEGLIGENCE OF THE CITY OR THE RAILROAD. FURTHER, IF THE CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ENACTMENTS, RESULTS IN ANY FINE, COST OR CHARGE BEING ASSESSED, IMPOSED OR CHARGED AGAINST THE CITY OR THE RAILROAD, THE CONTRACTOR SHALL REIMBURSE AND INDEMNIFY THE CITY OR RAILROAD FOR ANY SUCH FINE, PENALTY, COST, OR CHARGE, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES. UPON THE RAILROAD'S OR CITY'S NOTICE OF ANY SUCH ACTION BEING PROVIDED BY THE RAILROAD OR THE CITY, THE CONTRACTOR AGREES TO DEFEND SUCH ACTION FREE OF COST, CHARGE OR EXPENSE TO THE CITY OR THE RAILROAD.**

M. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

- (1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;
- (2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission) that includes:
  - (a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and
  - (b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

The Commission has approved a Certificate of Interested Persons form, which must be filled out, signed and notarized by the Contractor and submitted to the City at the time of execution of this Contract, along with the certification of filing generated from the Commission's website at <https://www.ethics.state.tx.us/tec/1295-Info.htm>. The Certificate of Interested Persons form is available on the Commission's website and the Contractor must follow the Commission's filing process adopted pursuant to the statute. The Contractor's notarized Certificate of Interested Persons and certification of filing are attached to this Contract.

N. Prohibition on Contracts with Companies Boycotting Israel. Contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89). Under the provisions of this statute, the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

The City has approved a verification form, which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

**IV. Contract Documents.** The Contractor must comply with the following additional Contract Documents, which are part of this Contract and are incorporated by reference:

1. General Conditions
2. Engineer's Specifications, including any special shoring requirements
3. Engineer's Plans and Drawings
4. Contractor's Proposal for the Project
5. Performance Bond
6. Payment Bond
7. Labor Classification and Minimum Wage Rates
8. State of Texas Workers' Compensation Insurance Coverage Addendum
9. Requirements for all Insurance Documents
10. Notice to Proceed
11. Contractor's Affidavit of Bills Paid
12. Notice to Offerors
13. Instructions to Offerors
14. Change Orders
15. Addenda
16. Conflict of Interest Questionnaire
17. House Bill 89 Verification
18. Certificate of Interested Persons with Certification of Filing
19. Geo-Tech Report (if Contract involves trench excavation exceeding depth of five feet)

If there is a conflict between or among the terms of the Contract the City will determine which provision applies.