

December 5, 2024

Stan R. Farmer
City Administrator
City of Bandera, Texas
511 Main Street
Bandera, Texas 78003

Re: City of Bandera – SH 16 TASA Grant Support – Preliminary Application Support

Dear Mr. Farmer:

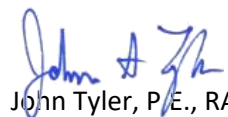
We are pleased to present this proposal for engineering services to support the development of a transportation alternative set-aside grant proposal in connection with the above referenced project. Based on our conversations with City staff and understanding of the project objectives, we are tasked to develop a Level of Effort and Scope to serve as the basis for developing the schematic design and cost opinion. Our proposed scope of services Exhibit A is attached.

Basis of Compensation and Level of Effort

A budget of \$8,500 is the lump sum fee of Pape-Dawson's current understanding of the services identified for Phase I. This budget figure is not to be exceeded without written modification of this Agreement.

We look forward to working with you on this project. If you have questions or comments regarding the proposed services, please let me know.

Sincerely,
Pape-Dawson Consulting Engineers, LLC



John Tyler, P.E., RAS
Managing Vice President

Attachments

- Exhibit A
- Pape-Dawson Terms and Conditions

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Exhibit "A"

Scope of Services Provided by Engineer

Project Description and Limits

Provide support towards the development of the TxDOT 2025 Transportation Alternatives Set-Aside (TA) Call for Projects. The reconstruction limits encompass SH 16 from TX 173 to Hackberry Street.

The project scope should include layout of curb replacements, sidewalk upgrades, driveway reconstructions, drainage assessments, and traffic signal improvements. Additionally, project should be reviewed to include upgrading existing drainage to provide equivalent or improved capacity, as necessary, to support the proposed improvements.

Design Criteria. The Engineer should prepare all work in accordance with the latest version of applicable City or State procedures, specifications, manuals, guidelines, standard drawings, and standard specifications or previously approved special provisions and special specifications. This includes: the TxDOT *PS&E Preparation Manual*, *Roadway Design Manual*, *Hydraulic Design Manual*, the *Texas Manual on Uniform Traffic Control Devices (TMUTCD)*, *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* (latest Edition), and other City-approved manuals. When design criteria are not identified in City manuals, the Engineer should notify the City and refer to the American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets* (latest Edition) and the *Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way* published by the Architectural and Transportation Compliance Board (Access Board) on July 26, 2011, 36 CFR Part 1190 or its final adopted guidelines. Additionally, the Engineer should follow the City's guidelines when developing the PS&E package. Each PS&E package to be prepared in a form suitable for letting through the City's construction contract bidding and awarding process.

Progress Reporting and Invoicing. The Engineer should submit a monthly written progress report to the City's Project Manager. The progress report should describe activities during the reporting period; activities planned for the following period; problems encountered, and actions taken to resolve them; a list of meetings attended; and overall status of the project, including a percent complete by task.

Quality Assurance (QA) and Quality Control (QC). The Engineer should provide peer review at all levels. For each deliverable, the Engineer should document evidence of their internal review and mark-up of that deliverable as preparation for submittal.

Personal Protective Equipment (PPE). PPE to comply with all (1) current standards set by the Occupational Safety and Health Administration (OSHA) and (2) TxDOT requirements. Each business vehicle must be clearly marked with the Engineer's business name or the name of the appropriate subcontractor, ensuring identification from a distance.

1. Project Management and General Items

At each milestone submittal the Engineer should:

- Prepare and distribute meeting minutes to project stakeholders.
- Maintain a design schedule.
- Develop typical sections, plan elements, summary of quantities, location maps, and cost opinion.

Progress reports, invoices, and associated support documents should be prepared monthly.

The Engineer should conduct one (1) meeting with the City to identify specific concerns in the field, at the request of the city.

2. Right-of-Way Surveying and Mapping

The Engineer should complete the following tasks along the project limits:

- Obtain or collect data through aerial imagery or digital media review.
- Locate topographical features and existing improvements such as signs, elevations, driveways, curb lines, structures, pavement markings, signals, etc.
- Locate above-ground evidence of existing utilities.
- Conduct a preliminary review of existing drainage features (e.g., culverts, manholes, etc.), including pipe sizes, materials, and invert and rim elevations.
- Locate trees within the apparent right-of-way.

3. Roadway

The Engineer should update geometric schematic and typical section layouts to support the preliminary application. Typical Section Layouts should consist of existing features and the proposed improvements within the existing apparent right-of-way (ROW).

- The Engineer should prepare typical sections for proposed and existing conditions. Typical sections should include:
 - Width of travel lanes, shoulders, outer separations, border widths, curb offsets, and apparent ROW.
 - Proposed Profile Grade Line (PGL), centerline, pavement design, sidewalks, station limits, and common proposed and existing structures (including retaining walls).
 - Existing pavement removal, riprap, and limits of embankment and excavation.

The design should be created using Bentley technology in the PowerGEOPAK platform with GEOPAK tools.

Accessibility elements should follow Public Right-of-Way Accessibility Guidelines (PROWAG).

4. Signing, Pavement Markings, and Signalization

The Engineer should review corridor signalization for impacts to existing and proposed infrastructure to accommodate within the cost opinion. Roadway existing illumination will be reviewed to identify necessary adjustments for proposed conditions. The Engineer should refer to latest version of the TMUTCD, Traffic Signal Manual, and TxDOT's roadway and traffic standards for work performed for temporary and permanent traffic signals.

5. Cost Estimating

The Engineer should prepare an opinion of probable construction costs for proposed improvements identified within the base scope.

Deliverables

The Engineer should provide the following:

- An updated schematic
- Updated Typical Sections
- An estimate of construction cost
- Preliminary application support, including technical project write-up

PAPE-DAWSON CONSULTING ENGINEERS, LLC
RE: City of Bandera – SH 16 TASA Grant Support – Preliminary Application Support (the “Project”)
TERMS AND CONDITIONS

PAPE-DAWSON CONSULTING ENGINEERS, LLC, a Texas limited liability company, located at 2000 NW Loop 410, San Antonio, Texas, 78213-2251, hereinafter referred to as "Engineer", has agreed to provide Professional Services to City of Bandera, Texas, hereinafter referred to as "Client," pursuant to the terms set out in a "Proposal - Scope of Services and Compensation" (the "Proposal") executed by Client and these Terms and Conditions.

ARTICLE 1: SERVICES

Engineer agrees to perform Professional Services (the "Services") in conformance with the descriptions, definitions, terms and conditions as set forth herein and on the Proposal and any Exhibits, rate sheets, and Additional Services Requests subsequently attached hereto or incorporated hereto by reference. This description of Services is intended to be general in nature and is neither a complete description of Engineer's Services nor a limitation on the Services that Engineer is to provide under this Agreement.

ARTICLE 2: PROPOSAL AND ADDITIONAL SERVICES REQUESTS

2.1 These Terms and Conditions, the Proposal and any Exhibits, rate sheets, and Additional Services Requests for this Project are hereby incorporated by reference and are collectively referred to herein as the "Agreement."

2.2 The Proposal, as amended or modified by any Additional Services Requests, shall identify the specific Scope of Services to be performed and the amount and type of compensation for the specific services.

2.3 Client shall authorize and Engineer shall commence work set out in the Proposal and any Additional Services Requests upon Client's execution of the Proposal.

ARTICLE 3: CHANGES

3.1 The Client may at any time, by written Additional Service Request, make changes within the general scope of the Proposal relating to services to be performed for this Project. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 The Engineer is not obligated to begin work on a change of scope or deliver that work product until a properly executed Additional Services Request is signed by the Client.

3.3 This Agreement is based on laws and regulations in effect as of the date of execution of this Agreement by Client. Changes after this date to these laws and regulations may be the basis for modifications to Engineer's scope of Services, times of performance, or compensation. In the event that there are modifications and/or additions to legal or regulatory requirements relating to the Services to be performed under this Agreement after the date of execution of this Proposal, the scope of Services, times of performance, and compensation provided for in these Terms and Conditions, the Proposal, and any subsequent Additional Services Requests shall be reflected in an appropriate Additional Services Request.

3.4 Should commencement of the individual tasks or services set out in the Proposal not be initiated within three (3) months of the date of execution of the Proposal by Client, Engineer reserves the right to revise the costs, fees, and scope of work for the tasks or services not yet initiated.

3.5 If after the commencement of work, Engineer's performance of the individual tasks or services is suspended at the instruction of client for a period of three (3) cumulative months, Engineer may at its sole discretion submit to client an invoice for all tasks and services performed prior to suspension, and Client shall pay that invoice within thirty (30) days after receipt. If Client fails to pay the invoice in full within thirty (30) days, Engineer may terminate this Agreement in accordance with the provisions of Article 7.1 herein.

ARTICLE 4: THE TERM

4.1 **Term.** Engineer shall be retained by Client as of the date Client executes the Proposal, Engineer shall complete its Services within a reasonable time, and this Agreement shall remain in effect until the Services have been fully performed or until the Engineer's Services are terminated under provisions of the Agreement.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Engineer with access to the Property or to any other site as required by Engineer for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project; designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Engineer's submissions, and give prompt written notice to Engineer whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Engineer core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements, and any other information previously made available to the Client, which may be required by Engineer, all of which Engineer may rely upon in performing its services.

Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of constructor(s)' applications for payment, and any inspection services to determine if constructor(s) are performing the work legally.

5.3 **Other Information.** Engineer will rely upon commonly used sources of data, including database searches and agency contacts. Engineer does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Indemnity.** The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless for damages and losses arising from the negligent acts, errors or omissions of the Engineer in the performance of the professional services under this Agreement, to the extent that the Engineer is responsible for such

damages and losses on a comparative basis of fault and responsibility between the Engineer and the Client. The Engineer is not obligated to indemnify the Client for the Client's own negligence.

Notwithstanding the foregoing, to the fullest extent permitted by law, engineer shall indemnify and hold the client harmless from and against all claims arising out of or resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of engineer or any of its subcontractors.

To the fullest extent permitted by law, Client and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants or subconsultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

5.5 Ownership of Documents. All designs, drawings, specifications, documents, and other work products of the Engineer, whether in hard copy or in electronic form, are instruments of service for the Services, whether Services are completed or not. Reuse, change or alteration by the Client or by others acting through or on behalf of the Client of any such instruments or service without the written permission of the Engineer will be at the Client's sole risk. Client agrees to indemnify the Engineer, its officers, partners, employees, and subcontractors from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees, arising out of or related to such unauthorized reuse, change or alteration.

5.6 Reporting Obligations. Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Engineer from providing any notices or reports that it may be required by law to give to governmental entities.

5.7 Laboratory Services. In performing environmental services, Engineer may make use of an independent testing laboratory. Engineer will not, and Client shall not rely upon Engineer to, check the quality or accuracy of the testing laboratory's services.

5.8 Changed Conditions. The Client shall rely on the Engineer's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer, including but not limited to suspension of Engineer's work as set out in Article 3.5 herein. Should Engineer call for contract renegotiation due to such changed conditions, the Engineer shall identify the changed conditions necessitating renegotiation and the Engineer and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.9 Opinions of Cost. Should Engineer provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Engineer and are merely opinions. Engineer does not warrant that actual costs will not vary from those opinions because, among other things, Engineer has no control over market conditions.

5.10 Construction Observation. If construction phase services are included in the basic services, the Engineer shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. The Engineer does not

guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s).

5.11 Subconsultants. Engineer may employ such Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Client.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 Compensation of Services. Engineer's compensation for services shall be set forth in the Proposal and any subsequent Additional Services Requests.

Compensation. Client agrees to pay Engineer for Professional Services in accordance with the descriptions, definitions, terms and conditions as set forth herein and in the Proposal and any Additional Services Requests, or Amendments subsequently attached hereto or incorporated herein by reference. Expenses directly related to these services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a 10% markup on cost.

Engineer reserves the right to adjust the hourly billing rates set out in the Proposal, Additional Service Requests, and/or Amendments thereto on an annual basis. Engineer shall notify Client of any hourly billing rate adjustments when they go into effect.

Payments. Engineer will invoice Client monthly in accordance with the terms and conditions of this Agreement, the Proposal, and any subsequent Additional Services Requests for Services and reimbursables. Client agrees to promptly pay Engineer at his office at 2000 NW Loop 410, San Antonio, Texas 78213-2251, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.2 Sales and Use Tax. Effective July 1, 1990, a State, City and MTA Sales Tax must be collected on Surveying Fees for the establishment of Real Property Boundaries and determining the location of structures or improvements in relation to the boundaries. Charges for prints and reproductions are also subject to a Sales Tax. Client agrees to pay Engineer the applicable Sales Tax on services and said tax is not considered a part of Engineer's compensation for services. In the event subsequent taxes are levied by Federal, State or Local authorities, relating to the services in writing and such modifications as are required shall be made a part of this Agreement.

6.3 Right to Stop Performance. If Client does not pay any amount due to Engineer within thirty (30) days after the invoice date, Engineer may, upon three (3) additional days' verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.4 Interest. Payments due and unpaid to Engineer under the Agreement shall bear interest at the rate of twelve percent (12%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.

6.5 **Attorney's Fees:** In the event Engineers' invoices for services are given to an attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Engineer all costs of collection, including the maximum attorney's fees allowed by Law and court costs, in addition to other amounts due.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated without cause at any time prior to completion of Engineer's services, either by Client or by Engineer, upon written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Engineer shall discontinue work under this Agreement immediately. In the event Client terminates the Agreement based on Client's reasonable opinion the Engineer has failed or refused to prosecute the work efficiently, promptly or with diligence, the Engineer shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement.

7.2 **Compensation in Event of Termination.** On termination, by either Client or Engineer, Client shall pay Engineer with respect to all contracted services rendered and expenses incurred before termination an amount fixed by applying the Engineer's Standard Hourly Rates, in force at the time of termination, to all services performed to date, in addition to termination settlement costs the Engineer reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor:** It is understood that the relationship of Engineer to Client shall be that of an independent contractor. Neither Engineer nor employees of Engineer shall be deemed to be employees of Client.

ARTICLE 9. LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** To the fullest extent permitted by law, the total liability of Engineer and its subconsultants and subcontractors to Client for any and all injuries, claims, losses, expenses, or damages whatsoever from any cause or causes, including, but not limited to, strict liability, breach of contract, breach of warranty, negligence, or errors or omissions (collectively "Claims") shall not exceed the Engineer's total fee. In no event will Engineer, its subconsultants or subcontractors be liable for punitive, special, incidental, or consequential damages.

9.2 **No Certification.** Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain. The Client also agrees not to make resolution of any dispute with Engineer or payments of any amount due to Engineer in any way contingent upon Engineer's signing any such certification.

9.3 **Execution of Documents.** The Engineer shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the Engineer, increase the Engineer's risk or the availability or cost of its professional or general liability insurance.

9.4 **No Supervision of Contractors.** Engineer shall not at any time supervise, direct, control, or have authority over any contractor

work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

9.5 Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Subconsultants) at the Project site or otherwise furnishing or performing any work for the Project.

ARTICLE 10: MISCELLANEOUS

10.1 **Entire Agreement.** The Agreement (including any exhibits) contains the entire agreement between Engineer and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by a written document executed by both parties.

10.2 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.3 **Venue.** Venue of any action under the Agreement shall be exclusively in Bexar County, Texas.

10.4 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.5 **Construction of Agreement.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.6 **Successor and Assigns: Third Party Beneficiary.** The Agreement shall be binding upon Engineer, Client and their respective legal representatives, successors and permitted assigns. Neither Engineer nor Client may assign the Agreement nor any right or obligation under it without the prior written consent of the other party. Nothing in the Agreement restricts Engineer's ability to hire subcontractors in connection with the Services. The Services and any report prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless Engineer gives Client prior and specific written approval.

10.7 **Dispute Resolution.** Any claim, dispute or other matter in question arising out of or related to the Agreement of the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the

Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.8 **Mediation:** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their respective subcontractors, suppliers, and subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.9 **No Warranty.** Engineer makes no warranty, either expressed or implied, as to Engineer's findings, recommendations, plans, specifications, or professional advice. Engineer has endeavored to perform its services in accordance with generally accepted standards of practice by recognized professional firms in performing services of a similar nature in the same locality, under similar circumstances. Client recognizes that neither Engineer nor any of Engineer's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.10 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Engineer and of Client which would otherwise Survive termination of the Services.

10.11 Complaints regarding surveying may be filed with the Texas Board of Professional Land Surveying, Building A, Suite 156, 12100 Park 35 Circle, Austin, TX 78753.