

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and **PLUMMER ASSOCIATES, INC.** (“Consultant”).

1. SCOPE OF SERVICES.

Attached hereto and incorporated for all purposes incident to this Agreement is **Attachment A** more specifically describing the services to be provided hereunder.

2. TERM.

This Agreement shall commence upon execution by the parties (the “Effective Date”) and terminate upon completion of the work specified in the scope of services unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

3. COMPENSATION.

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed **One Hundred Ten Thousand Six Hundred Seventy Five Dollars (\$110,675)** in accordance with the fee schedule incorporated herein as **Attachment A**, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in Attachment A, Scope of Work. In the event of partial performance the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager’s designee.

The Consultant shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

4. TERMINATION.

4.1 Written Notice.

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the end of the term of this agreement as provided in Article 2, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

4.4 Termination for Cause

A. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.

1 Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 4.4.B if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

B. In addition to its termination rights in Paragraph 4.4.B, Consultant may terminate this Agreement for cause upon 7 days' written notice:

1. if City demands that Consultant furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
2. if Consultant's services for the work detailed in the scope of services are delayed or suspended for more than 90 days for reasons beyond Consultant's control.

C. Consultant will have no liability to City on account of any termination by Consultant for cause.

4.5 Termination for Convenience:

In addition to its termination rights in Paragraph 4.4, City may terminate this Agreement for convenience, effective upon Consultant's receipt of notice from Owner.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

6. RIGHT TO AUDIT.

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors, and

subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

8. CHARACTER OF SERVICES AND INDEMNIFICATION.

8.1 Character of Services.

Consultant shall perform as an independent contractor all services under this Agreement with the professional skill and care ordinarily provided by competent architects, engineers, or landscape architects practicing under the same or similar circumstances and professional license. Further, Consultant shall perform as an independent contractor all services under this Agreement as expeditiously as possible as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Provided, however, if this is a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part, the architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Consultant shall provide professional services necessary for the work described in Attachment "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Attachment "A" the terms and conditions of this Agreement shall be final and binding upon both parties hereto.

8.2 Indemnification.

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY FEES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OF OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, WHETHER SAID NEGLIGENCE IS SOLE NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE, CONCURRENT NEGLIGENCE OR ANY OTHER FORM OF NEGLIGENCE. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONSULTANT AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF

ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR CONSULTANT.

CONSULTANT WARRANTS THAT NO MUSIC, LITERARY OR ARTISTIC WORK OR OTHER PROPERTY PROTECTED BY COPYRIGHT WILL BE REPRODUCED OR USED, NOR WILL THE NAME OF ANY ENTITY PROTECTED BY TRADEMARK BE REPRODUCED OR USED BY CONSULTANT UNLESS CONSULTANT HAS OBTAINED WRITTEN PERMISSION FROM THE COPYRIGHT OR TRADEMARK HOLDER AS REQUIRED BY LAW, SUBJECT ALSO TO CITY'S CONSENT. CONSULTANT COVENANTS TO COMPLY STRICTLY WITH ALL LAWS RESPECTING COPYRIGHTS, ROYALTIES, AND TRADEMARKS AND WARRANTS THAT IT WILL NOT INFRINGE ANY RELATED STATUTORY, COMMON LAW OR OTHER RIGHT OF ANY PERSON OR ENTITY IN PERFORMING THIS AGREEMENT. CONSULTANT WILL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) WITH RESPECT TO SUCH COPYRIGHT, ROYALTY OR TRADEMARK RIGHTS TO THE EXTENT CAUSED BY CONSULTANT OR FOR WHOM CONSULTANT IS LEGALLY LIABLE.

THE PROVISIONS OF THIS SECTION ARE INTENDED TO ONLY PROVIDE INDEMNIFICATION TO THE EXTENT ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 WILL STILL NAME CITY AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY.

9. ASSIGNMENT AND SUBCONTRACTING.

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

10. INSURANCE.

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

- (a) Commercial General Liability
\$1,000,000 Each Occurrence
\$1,000,000 Aggregate

- (b) Automobile Liability
\$1,000,000 Each accident on a combined single limit basis or
\$250,000 Bodily injury per person
\$500,000 Bodily injury per person per occurrence
\$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

- (c) Worker's Compensation
Statutory limits
Employer's liability
\$100,000 Each accident/occurrence
\$100,000 Disease - per each employee
\$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

- (d) Errors & Omissions (Professional Liability):

\$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

12. NON-DISCRIMINATION COVENANT.

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

13. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of

the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson
City Manager's Office
Attn: Bryan Langley
141 W. Renfro St.
Burleson, TX 76028

To CONSULTANT:

Plummer Associates, Inc.
Attn: George Farah
1320 S. University Dr, Suite 300
Fort Worth, TX 76107

14. GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

15. NO WAIVER.

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

17. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. FORCE MAJEURE.

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

19. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

22. ENTIRETY OF AGREEMENT.

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

23. SIGNATURE AUTHORITY.

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

24. NO WAIVER OF GOVERNMENTAL IMMUNITY.

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

26. MANDATORY ANTI-ISRAEL BOYCOTT PROVISION.

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

27. NON-EXCLUSIVITY.

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

28. NO THIRD-PARTY BENEFICIARIES.

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. §

52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

30. OWNERSHIP OF DOCUMENTS.

All documents and materials prepared by Consultant under the terms of this Agreement are the City's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection whenever requested. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

31. COUNTERPARTS; PDF SIGNATURES.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

The remainder of this page is left intentionally blank

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BURLESON:

INSERT NAME:

By: _____

By: George Farah

Name: _____

Name: George I Farah

Title: _____

Title: Principal

Date: _____

Date: 3/29/2023

APPROVED AS TO FORM:

By: _____
City Attorney, Assistant City Attorney,
or Deputy City Attorney

ATTACHMENT A

Scope of Services

ATTACHMENT A SCOPE OF SERVICES

12-INCH WILLOW CREEK WATER LINE LOOPING – PRELIMINARY DESIGN, DETAILED DESIGN, AND CONSTRUCTION PHASE SERVICES

I. BACKGROUND

The City of Burleson, herein referenced as OWNER, requests and authorizes Plummer Associates, Inc. (ENGINEER) to perform BASIC ENGINEERING SERVICES for the 12-inch WILLOW CREEK WATER LINE LOOPING identified below.

This project includes the design of approximately 1,750 linear feet of a primary waterline (assumed to be approximately 12-inches in diameter, PVC with ductile iron fittings) from the OWNER's existing 12-inch water system in Fairway Drive to an existing 12-inch water system located in St. Andrews Drive. The project also includes a creek crossing and is expected to provide looping and increased fire flow protection.

The PROJECT will generally consist of Project Management and coordination, topographic survey, easement preparation, limited Geotechnical services, environmental review, a preliminary Engineering design (30% Design), Final Design (90%), and Construction Phase Services.

II. BASIC SERVICES

Basic Services provided by the ENGINEER shall generally be covered under the following activities:

- a. Activity A – Project Management
- b. Activity B – Project Coordination
- c. Activity C – Data Review
- d. Activity D – Engineering Memo and preliminary design (30% Design)
- e. Activity E – Data Collection
- f. Activity F – Detailed Design
- g. Activity G – Final Design
- h. Activity H - Construction Phase Services.
- i. Activity I –

Specific tasks for each activity are identified in the following sections.

ACTIVITY A – PROJECT MANAGEMENT

Task A.1 – Project Management

Provide project management for the above activities. Project management shall include maintaining communication and coordination with OWNER; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings and schedule updates; management of subconsultants; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the OWNER on a regular basis.

- a. ENGINEER will coordinate design efforts on project tasks identified below.
- b. ENGINEER will prepare a common monthly invoice for all services.
- c. Deliverables
 - Monthly Invoices

Task A.2 – Kickoff Meeting and Meeting Preparation (Virtual)

ENGINEER will prepare for and participate in one Virtual Project kick-off meeting for the PROJECT. At the kick-off meeting ENGINEER will confirm with the OWNER the scope of work, deliverables, schedule and administrative protocols.

- a. The purpose of the kickoff meeting will be to:
 - Develop communication procedures
 - Review the work to be completed and discuss OWNER preferences of design.
 - Review the project schedule, including identifying critical path tasks
 - Advise OWNER as to the necessity of OWNER providing or obtaining data or services from others.
 - Develop an Information Request Log and Action Item Log documenting meeting outcomes and OWNER requests.
- b. ENGINEER will prepare and distribute to the OWNER draft meeting notes for review. After receipt of comments, the meeting notes shall be finalized and distributed to the OWNER's and the ENGINEER's team in pdf format for record purposes.
- c. Deliverables:
 - Draft and Final Meeting Notes
 - Project Management Plan
 - Baseline Evaluation Schedule of Activities and Tasks

Task A.3 – Progress Meetings

ENGINEER will coordinate, prepare for, and conduct progress meetings to review progress with the OWNER and stakeholders. Meetings shall take place at the OWNER's office. Two (2) progress meetings are assumed based on the preliminary schedule. These meetings shall be in addition to the quality control meetings which will be held at the 30%, 90% milestones, the Kickoff Meeting and any meetings during the construction phase. Additional progress meetings shall be provided as an ADDITIONAL SERVICE.

- a. ENGINEER will prepare for and moderate each meeting.
- b. ENGINEER will prepare and distribute draft meeting notes to the OWNER for review. After receipt of comments, the meeting notes shall be finalized and distributed to the OWNER and any sub-consultants in pdf format for record purposes.
- c. Deliverables:
 - Agendas
 - Draft and Final Meeting Notes

ACTIVITY B – PROJECT COORDINATION

OWNER's staff shall coordinate with stakeholders along the proposed waterline alignments.

Task B.1 – Stakeholder Coordination

- a. ENGINEER shall coordinate with stakeholders encountered along the PROJECT. The ENGINEER will

coordinate and acquire permits as needed to construct the PROJECT. Anticipated permits are as follows:

1. USCEO
 2. Development permit, if needed.
- b. ENGINEER shall provide stakeholders with relevant project information to facilitate any design work necessary within the PROJECT area.
- c. Deliverables:
1. Final Meeting Notes from Meetings
 2. Permit Applications (as needed)

ACTIVITY C – DATA REVIEW

Task C.1 – Review and Verification of Existing Data

The OWNER shall provide the following information to the ENGINEER for review: existing geotechnical documents; existing environmental documents; record drawings from previous projects associated with the PROJECT; survey information; and utility information.

- a. ENGINEER will review the existing record drawings, environmental documents, collection system master plans, hydraulic models, and any other information provided by the OWNER.

ACTIVITY D – ENGINEERING MEMO AND ALIGNMENT STUDY (30% DESIGN)

Task D.1 – Archaeological Services

There is a low probability for prehistoric sites and historic farmstead(s) on or within the boundaries of the project site.

- a. ENGINEER will review of the proposed project corridor for compliance with the Texas Antiquities Law and Section 106 of the National Historic Preservation Act.
- b. ENGINEER will conduct the necessary field research based on the background information and prepare a report detailing the project location, physical features, identifying previously recorded surveys and newly recorded sites in the general location of the project area.
- c. ENGINEER will coordinate review of the report with the Texas State Historic Officer to discern if further studies are required.

Task D.1 – Potable Primary and Secondary Waterline Alignment Evaluation

The ENGINEER will meet with the OWNER and develop the primary and secondary waterline alignments. Alignments will be based on GIS data, record drawings, aerial imagery, parcel information, available topographic data, land use, archaeological data, utility atlas maps, and other publicly available data.

- a. Include design details to connect to and convey potable water from Fairway View Dr. to St. Andrews Dr.
- b. For each of the alignments, if necessary, identify potential easement access locations.
- c. Perform a desktop review including USGS topographic maps, National Wetland Inventory maps, National Hydrography Data (NHD) set, soil survey maps and available aerial imagery to identify potential environmental issues associated with the pipeline alignment alternatives.

- d. Section 404 of the Clean Water Act Permit coordination including threatened and endangered species review and cultural resources review.
- e. Evaluate ROW needs for the proposed alignments and develop GIS based figures illustrating the ROW requirements including permanent and temporary easements.
- f. Prepare AACE Class IV level cost estimate for alignment.
- g. Alignment of the proposed waterline is on the Mountain Valley Country Club Golf Course.

Task D.6 – Preliminary Engineering Memo

- a. The ENGINEER will prepare a Draft Engineering Memo for the PROJECT. The Memo shall include a summary of the waterline alignment; valve layouts; utility coordination; Preliminary ROW needs; AACE Class IV level opinion of probable construction costs; and conclusions and recommendations for detailed design.
- b. The ENGINEER will prepare one (1) pdf electronic copy of the draft Engineering Memo. Present the draft to the OWNER for comments. The ENGINEER will either have a virtual meeting with the OWNER or correspond via email and notes any comments on the memo. Comments will be tracked and incorporated into the Final Engineering Memo.
- c. Deliverables:
 - Preliminary Engineering Memo.

ACTIVITY E – DATA COLLECTION

Data Collection will not begin until the ENGINEER has received an approved alignment from the OWNER.

Task E.1 – Topographic Survey and Legal Descriptions

- a. Establish a minimum of two (2) control points for horizontal and vertical purposes in which 1 control point is derived from an OPUS solution of a GPS static session.
- b. Perform a profile survey of proposed alignments.
- c. Topographic Data:
 - ENGINEER will pull topographic/LiDAR data from 3Dep.
 - Check topo accuracies with profiled alignments.
- d. Utilities: "Texas 811" will be contacted at least 72 hours prior to survey and the locations as marked will be obtained.
 - ENGINEER will contact members listed on the ticket, request utility atlas maps, and plot atlas maps as "per atlas map" if said maps are provided to ENGINEER by the Utility Owner.
 - Utility information will be placed in the Civil 3d and/or AutoCAD drawing.
- e. Storm sewer manholes, sanitary sewer manholes, water valves, and inverts will be measured for depth (to the connection outside of survey limits)
- f. Document Research
 - Research deeds, plats, and other documents from County Clerk's and Assessor office / websites or through an abstractor/title company

- g. Boundary Control Research
 - Research section lines and/or platted monuments to be able to sufficiently plot plats and any un-platted deeded properties.
- h. Plot properties, right-of-way, and easements (if applicable) along alignments
- i. Easement Exhibit Preparation
 - Prepare legal descriptions and easement exhibits for the anticipated three (3) parcels that will require it.
 - All easement boundaries will be provided in Civil 3D or AutoCAD Format referenced to the profile alignments completed by the ENGINEER.
- j. Deliverables
 - Civil 3D File and AutoCAD file of the above items
 - Easement Exhibits in PDF

Task E.2 – Geotechnical Engineering (Not in Contract)

ACTIVITY F – DETAILED DESIGN

Following the development of the recommended alignment in the Engineering Memo, the survey and geotechnical tasks will be given Notice to Proceed and detailed design services shall be provided for the PROJECT as follows:

Task F.1 – Design of the Waterline

- a. Prepare detailed plans, specifications, and contract documents for:
 - The design of approximately 1,750 linear feet of a 12-inch potable waterline including a trenchless creek crossing. The waterline will connect to the OWNER's existing water distribution system as shown in the Engineering Memo. The design will consist of plan and profile sheets at a 1-inch equals 20-foot scale unless deemed otherwise necessary by the ENGINEER to show greater detail. The alignment shall be based on the alignment detailed in the Engineering Memo. The design will include the necessary connection details.
- b. The ENGINEER will consult with the OWNER, public utilities, private utilities, the county, and other facilities that have an impact or influence on the project. The ENGINEER will coordinate and acquire permits required to cross existing utilities and easements as needed to construct the PROJECT. Permits may include, but are not limited to the following:
 - Private Utility Permits
 - USCOE
 - Johnson County
- c. ENGINEER will furnish PDF copies of the Plans, Specifications and an ACE Class 2 Opinion of Probable Construction Cost (OPCC) to the OWNER approximately 14 days prior to the Quality Control meeting. ENGINEER shall provide a written record of OWNER comments and the ENGINEER's responses for the Quality Control Meeting.
- d. Deliverables:
 - Plans, Specifications and Contract Documents
 - ACE Class 2 OPCC

Task F.2 – Final Design (90%) of the Waterline

- a. Incorporate OWNER design comments into the Plans, Specifications and OPCC.
- b. Prepare AACE Class I OPCC for the Project.
- c. ENGINEER will furnish PDF copies of the 90% Plans, Specifications and an AACE Class 1 Opinion of Probable Construction Cost (OPCC) to the OWNER approximately 14 days prior to the Quality Control meeting. ENGINEER shall provide a written record of OWNER comments and the ENGINEER's responses for the Quality Control Meeting.
- d. Deliverables:
 - 90% Plans, Specifications and Contract Documents
 - 90% AACE Class 1 OPCC

Task F.3 – Bid Documents (100%) of the Waterline

- e. Incorporate 90% OWNER design comments into the Plans, Specifications and OPCC.
- f. Prepare AACE Class I OPCC for the Project.
- g. The ENGINEER will utilize OWNER furnished Bidding and Contract Forms.
- h. ENGINEER will furnish PDF copies of the 100% Plans, Specifications and an AACE Class 1 Opinion of Probable Construction Cost (OPCC) to the OWNER . Engineer will provide a copy of signed and sealed drawings and specifications.
- i. Deliverables:
 - 100% Plans, Specifications and Contract Documents
 - 100% OPCC
 - Final contract documents for bid

ACTIVITY G – BID PHASE SERVICES (NOT INCLUDED)

ACTIVITY H – CONSTRUCTION PHASE SERVICES

The presence or duties of ENGINEER's personnel at a construction site does not make ENGINEER or its personnel in any way responsible for those duties that belong to the OWNER and/or Construction Contractor or other entities, and does not relieve the Construction Contractor or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the contract documents and any health or safety precautions required by such construction work.

1. ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except ENGINEER's own personnel.
2. The presence of ENGINEER's personnel at a construction site is for the purpose of providing to ENGINEER and OWNER a greater degree of confidence that the completed work will conform generally to the contract documents and that the integrity of the design concept as reflected in

the contract documents has been implemented and preserved. The ENGINEER neither guarantees the performance of the Construction Contractor nor assumes responsibility for Contractors' failure to perform their work in accordance with the contract documents.

3. The Engineer shall provide field and administrative services for one construction project totaling up to 12 months of construction. If the OWNER elects to divide the recommended improvements into separate construction projects the construction services for the additional projects shall be provided as an ADDITIONAL SERVICE.
4. Field activities identified below are limited to site visits and meetings attended by the project manager and design engineering support staff. Administrative activities include general contract administration, submittal review and record drawing preparation that typically occurs in the office of the ENGINEER.

Task H.1 –Field Activities

- a. Represent the OWNER in Non-Resident construction administration of the PROJECTS. In this capacity, the construction administration duties shall not place any responsibility on ENGINEER for the techniques, sequences, and methods of construction or the safety precautions incident thereto, and the ENGINEER will not be responsible or liable in any degree for the Contractor's failure to perform the construction work in accordance with the Contract Documents.
- b. Provide Engineering surveys in AutoCAD format to establish benchmarks and reference points for construction, one time only.

Task H.2 –General Contract Administration and Submittal Review

- a. Conduct a Pre-Construction conference with the CONTRACTOR. Prepare and distribute meeting notes.
- b. Make one (1) Special Site Visits for specific contractor coordination or at the OWNER's request.
- c. Review up to six (6) shop drawings or laboratory or shop and mill test of material pursuant to the General Conditions of the Construction Contract. Review of submittals are included as Basic Services. Review of more than 6 submittals will be considered ADDITIONAL SERVICES and charged to the Contractor as part of the contract specifications. Incomplete submittals will not be reviewed.
- d. Interpret the intent of the plans and specification for the OWNER and CONTRACTOR, responding to Requests for Information. Investigations, analyses, and studies requested by the Contractor and approved by the OWNER, for substitutions of equipment and/or materials or deviations from the plans and specifications will be considered an ADDITIONAL SERVICE. NOTE: Such studies conducted by the ENGINEER, if determined to be inadequate, due to incompleteness of ENGINEER prepared plans and specifications will be revised without additional compensation. Any defective designs, plans or specifications furnished by the ENGINEER shall be promptly corrected by the ENGINEER at no cost to the OWNER.
- e. Revise the construction drawings in accordance with the information furnished by Construction Contractor and the Resident Project Representative reflecting changes in the PROJECT made during construction. One set of reproducible prints of "Record Drawings" and PDF files shall be provided by the ENGINEER to the OWNER. Record Drawings shall be provided to the OWNER within 60 days of receipt of the as-built drawings from the CONTRACTOR.

III. ADDITIONAL SERVICES

Additional Services are those services not included in General Services that may be required for the Project but cannot be defined sufficiently at this time to establish a Scope of Work. These include, but are not necessarily limited to the following:

- a. Identification of tree species along alignment for tree survey if required by OWNER.
- b. Modifications to the design of improvements previously approved by the OWNER by acceptance without comment on conceptual, preliminary or detailed design progress submittals.
- c. Surveying beyond the scope of items included in Basic Services.
- d. Geotechnical Investigations beyond the scope of items included in Basic Services
- e. Easement acquisition assistance or aid in acquiring property in fee, including in house labor by the Engineer, subconsultant services or property appraisals.
- f. Hydraulic and Transient Modeling for the OWNER's system and the Project as it relates to the OWNER's system. It is understood that any necessary modeling will be performed by another firm. Hydraulic and Transient Modeling can be performed as an ADDITIONAL SERVICE.
- g. Archeological investigations not included in Basic or Special Services.
- h. GIS processing of geophysical and/or geotechnical data beyond the assumptions provided in Basic or Special Services.
- i. Preparation of storm water permits or pollution protection plans (SWPPP).
- j. Section 404 of the Clean Water Act Permit Coordination
- k. ENGINEER will assist the OWNER in determining the impacts and regulatory permitting requirements as a result of the proposed project. A site investigation will be required to complete an aquatic resources delineation for the presence and potential impacts to waters of the U.S. regulated under Section 404 of the Clean Water Act. The purpose of the aquatic resources delineation is to identify and define limits of waters of the U.S. as defined in the U.S. Army Corps of Engineers (USACE) Regulatory Program Regulations, Section 33 CFR 328.2 that may be impacted by the proposed project and to quantify impacted area.
- l. ENGINEER shall perform the following activities:
 1. Obtain background data for task: Floodplain maps, National Wetland Inventory maps, U.S. Geological Survey maps, current and historical aerial photographs, soil data maps, and other readily available data
 2. Conduct an on-site investigation to visually assess the site and to delineate the limits of aquatic resources, including wetlands, within the proposed corridor pursuant to current USACE guidelines including delineation of identified aquatic resources with a hand-held GPS device.
 3. Prepare an Aquatic Resources Delineation Report (ARDR), including maps of the identified aquatic resources, to conform with the 1987 U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual and the Regional Supplement to the manual for the Great Plains Region.
 4. Provide with the ARDR an opinion of waters of the U.S. (jurisdictional waters) associated with the delineated aquatic resources.
 5. Identify and quantify impacts to waters of the U.S. including adjacent wetlands.

6. Prepare a USACE Pre-construction Notification (PCN) for verification of authorization under appropriate Nationwide Permit if potential impacts exceed thresholds that would require notification to the USACE.
 7. Coordinate permit review for authorization of the proposed project under Nationwide Permit 58 (Utility Line Activities for Water and Other Substances) with the USACE, Tulsa District, Regulatory staff.
 8. Bid Phase Services.
 9. Threatened and Endangered Species Review.
 10. ENGINEER will not assist the OWNER in determining the potential impacts with respect to federally listed threatened or endangered species and regulatory permitting requirements. ENGINEER will obtain background data and delineate the site in the United States Fish and Wildlife Service (USFWS) Information, Planning, and Conservation (IPAC) System, and review the state list of Threatened and Endangered (T&E) Species list for Tarrant and Johnson County, Texas. A pedestrian investigation required to complete a T&E species assessment to determine the presence of and/or the critical habitat necessary for any listed (T&E) species for Tarrant and Johnson County, Texas will be conducted during the on-site investigation to delineate the limits of aquatic resources within the project area.
 11. ENGINEER will prepare a letter report documenting the findings of the investigation for T&E species and/or designated critical habitat.
- m. Exhaustive or continuous on-site inspections by the Engineer to check quality or quantity of the work or material.
 - n. Preparation for and attendance at monthly construction progress meetings and/or monthly site visits during Construction Phase Services
 - o. Review and response to additional submittal packages and/or RFI's beyond those included in Basic or Special Services.
 - p. Review of Contractor's Monthly Pay Applications, final walk through site visit.
 - q. Observe factory witness manufacturing and testing of selected equipment.
 - r. Review of testing laboratories' reports and inspection bureaus required for the testing or inspection of materials, factory testing, etc.
 - s. Preparation of Field Orders and/or Change Orders.
 - t. Preparing applications and supporting documents for grants, loans, or planning advances for providing data for detailed applications.
 - u. Providing additional copies of reports, plans, specifications, OPCC's and contract documents beyond those specifically described in Basic and Special Services.
 - v. Preparing environmental impact statements, storm water discharge permits, pre-application meetings with USACE staff and Section 404 and 408 permit applications except as specifically included in the Basic Engineering Services.
 - w. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties other than condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the OWNER.

- x. Payment of fees for permit applications and publication(s) of notices.
- y. Preparation of a Traffic Control Plan or Storm Water Pollution Prevention Plan
- z. Formal Consultation with the U.S. Fish and Wildlife Service for Threatened or Endangered Species (Section 7 consultation)
- aa. Preparation of additional documentation required for Tier II Section 401 CWA Water Quality Certification form
- aa. Design of other improvements not identified in Basic or Special Services or Services known to be required for completion of the PROJECT that the OWNER agrees are to be furnished by the ENGINEER or by a sub-consultant that cannot be defined sufficiently at this time to establish the maximum compensation.

IV. COMPENSATION

The OWNER will compensate ENGINEER on a lump sum basis for the SERVICES rendered. The lump sum fee is broken down below by task as defined in the Scope of Services:

No.	Description	Fee (LS)
1	Design Services (30, 90, 100%) Labor	\$ 71,720
2	Reimbursable	\$ 462
3	Topographic Survey	\$ 13,027
4	Easement Preparation	\$ 6,866
5	Environmental Review and Findings	\$ 4,380
6	Construction Services	\$ 14,220
Total		\$110,675

The ENGINEER may submit interim statements, not to exceed one per month, for partial payment for SERVICES rendered. The statements to OWNER will be by task for the percentage of work actually completed. The OWNER shall make interim payments within 30 calendar days in response to ENGINEER's interim statements.

No budgetary allowance has established for Additional Services. Additional services must be authorized by amendment of the agreement.

V. SCHEDULE

- Complete Design Services 6 Months
- Advertise, Construction 12 Months