



Emergency Response and Emergency Preparedness Plan – Contract Proposal



PROVENANCE
ENGINEERING

Rooted to Be *Uniquely Different*



THIS IS AN AGREEMENT effective as of October 4, 2021 (“Effective Date”) between City of Stephenville (“Owner”) and Provenance Engineering, LLC. (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: Emergency Response and Preparedness Plan (“Project”).

Engineer’s services under this Agreement are generally identified as follows: Development of an Emergency Response Plan required for the America’s Water Infrastructure Act and an Emergency Preparedness Plan required under Senate Bill 3 of 2021. (“Services”).

Owner and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall complete its Services within the following specific time period: 9 months presuming there are no delays between each task.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s Services is impaired, or Engineer’s Services are delayed or suspended, then the time for completion of Engineer’s Services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer’s invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition, Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and agrees to pay the undisputed portion.

2.02 Basis of Payment—Lump Sum

- A. Owner shall pay Engineer for Services as follows:



1. A Lump Sum amount of \$71,030.00 unless prior OWNER approval in writing. Additional Services may be performed only with prior OWNER approval in writing.
 - a. Payments to be made by Owner based on work progression.
 2. In addition to the Lump Sum amount, reimbursement for the following expenses: NONE
- B. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.

3.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I. The Owner anticipates lead-based paint may be present and therefore shall not be consider a Constituent of Concern.
 - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
 - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven 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 of notice; 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 shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective



date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over



competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 - 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 - 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, 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 this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$40,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of



Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.
- M. Liquidated Damages - Failure to meet the time lines for completion of work identified in (the project schedule – or other appropriate language) will result in liquidated damages of \$50.00 per consecutive calendar day until the work identified in "Exhibit A" – Scope of Services is submitted. Liquidated damages are only applicable to items under the control of ENGINEER and will not be enforced due to circumstances out of the control of ENGINEER.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Definitions

- B. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule,



regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

Attachments: “Exhibit A”, Engineer’s Scope of Services

 “Exhibit B”, Fee Summary



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Stephenville

Engineer Provenance Engineering, LLC.

By: _____

By: _____

Print name: Doug Svien

Print name: Kent Riker, P.E.

Title: Honorable Mayor

Title: President

Date Signed: _____

Date Signed: _____

Engineer License or Firm's Certificate No.: 20783

State of: Texas

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Stephenville
298 W Washington Street
Stephenville, Texas 76401
254.918.1223

Provenance Engineering, LLC.
401 Russell Lane
Weatherford, Texas 76087
817.775.7172

IN DUPLICATE



PROVENANCE
ENGINEERING
Rooted to Be Uniquely Different

EXHIBIT - A





Project Description

The following Scope of Service describes the services and project tasks to be performed and completed by the ENGINEER in association with the Emergency Response Plan. The services associated with this Contract includes the completion of a qualitative Emergency Response Plan (ERP) and an Emergency Preparedness Plan (EPP) for the City of Stephenville to achieve compliance with the America’s Water Infrastructure Act of 2018 (AWIA) and 2021 Senate Bill No. 3 (SB3), respectively.

ERP: The population served by the City of Stephenville was reported to be 21,640 people according to the CWS report for the Safe Drinking Water Information System database as of October 2018. Therefore, Stephenville falls under the “Small System” bracket with a certification due for the ERP by December 31, 2021. The qualitative ERP will be based on the “Guidance for Small Community Water Systems on Risk and Resilience Assessments under America’s Water Infrastructure Act” released by the EPA for assistance for “Small Systems”.

EPP: SB3 requires all water utilities to create an Emergency Preparedness Plan for use to maintain operation of their water systems during extended power outages, maintaining a minimum water pressure of 20 psi (or level approved by TCEQ), as soon as practical following the occurrence of a natural disaster. Application for critical load status is due by November 1, 2021. The EPP submittal deadline including an implementation timeline is due to TCEQ by March 1, 2022.

Basic Services:

TASK 1.0 Project Management

The ENGINEER will perform project management related duties. Project management duties include coordinating project tasks, coordinating progress with the OWNER and obtaining existing information for use during the project. The following are the subtask.

- Deliverables: Project Status Reports

1.1 Project Management and Administration

The ENGINEER will manage the day-to-day progress of the project. The ENGINEER will track the budget and schedule regularly and meet with the OWNER's project manager as necessary to update the schedule, progress of services, and potential changes to the scope of services. ENGINEER will provide a project status report to the OWNER with the monthly invoice.

- #### 1.2 Quality Assurance / Quality Control (QA/QC) –
- The ENGINEER will follow their internal QA/QC processes throughout the project. These processes include internal checking of calculations, review of documents, and checking of submittals. Deliverables will be submitted to an ENGINEER’s QAQC Review by a senior level engineer.

- #### 1.3 Kick-off Meeting –
- Conduct a project kick-off meeting with OWNER to review the project scope of services and schedule, define lines of communication and protocols, review deliverables, and develop success factors for completing the project. The ENGINEER will identify a list of data needs for completing the ERP and EPP.



TASK 2.0 Emergency Response Plan

The ENGINEER will provide services to complete an Emergency Response Plan (ERP) for the OWNER water infrastructure that correlates to the Risk and Resilience Assessment (RRA). The ERP will include qualitative information on utility information, resilience strategies, emergency plans and procedures, mitigation actions, and detection strategies. ENGINEER will work with the information contained in the existing OWNER ERP and provide additional information to meet the requirements set forth by the AWIA. The EPA ERP template will be utilized for completion of the ERP.

- Deliverables: DRAFT Emergency Response Plan
FINAL Emergency Response Plan
 - Meetings: DRAFT Emergency Response Plan Workshop
- 2.1 Data Collection and Site Visits – This task includes collecting necessary data from the OWNER and from site visits, including but not limited to utility components, personnel information, response resources, existing ERP information, communication protocols, public notification protocols, core response procedures, incident specific response procedures, alternative source water options, interconnection with other utilities, other mitigation actions, and detection strategies.
 - 2.2 Completion of DRAFT ERP based on the EPA’s Emergency Response Plan Template:
 - 2.2.1 Utility Information
 - 2.2.2 Resilience Strategies
 - 2.2.3 Emergency Plans and Procedures
 - 2.2.4 Mitigation Actions
 - 2.2.5 Detection Strategies
 - 2.3 The ENGINEER will conduct an interactive review meeting with the OWNER to review the Draft ERP and garner input from the OWNER on the various sections of the Draft ERP.
 - 2.4 FINAL ERP – incorporation of comments from DRAFT Emergency Response Plan Workshop with the OWNER and deliver electronic copy of the FINAL ERP to the OWNER in both Word and PDF.
 - 2.5 Provide the template Certification Letter to the OWNER and assist OWNER in uploading the certification to the EPA website by December 31, 2021 for the OWNER to be in compliance with the AWIA.

TASK 3.0 Emergency Preparedness Plan

The ENGINEER will provide services to complete an Emergency Preparedness Plan (EPP) for the OWNER to be in compliance with Senate Bill 3. The EPP will include information on utility water infrastructure information, designation of alternate power option(s), emergency communications, emergency water use restrictions, and information on how the OWNER plans to maintain 20 psi in the distribution system following a natural disaster or power outage. The TCEQ EPP template will be utilized for completion of the EPP.

- Deliverables: Application for Critical Load Status
DRAFT Emergency Preparedness Plan
FINAL Emergency Preparedness Plan
- Meetings: DRAFT Emergency Preparedness Plan Workshop



- 3.1 Data Collection and Site Visits – This task includes collecting necessary data from the OWNER and from site visits, including but not limited to utility components, personnel information, response resources, communication protocols, public notification protocols, core response procedures, power consumption, detailed discussions with staff on operations and critical components during power outages.
- 3.2 Determine critical load and apply for critical load status – The ENGINEER will identify critical water infrastructure required to maintain pressure in the system, determine the crucial load from the critical infrastructure, and apply for critical load status with the electric provider and electric distributor by November 1, 2021.
- 3.3 Water system modeling – The ENGINEER will perform basic modeling of the storage and distribution system to determine a strategy to maintain 20 psi in the distribution system following a natural disaster or prolonged power outage. The ENGINEER will utilize an export of the existing water system model in EPANET for the analysis. This project does not include the creation of a model of the OWNER's water system.
- 3.4 Completion of DRAFT EPP based on the TCEQ's Emergency Preparedness Plan Template:
 - Introduction
 - Description of the Water System
 - Alternate Power Options – assuming Critical Load Status
 - Emergency Communications
 - Emergency Water Use Restrictions
 - Attachments
- 3.5 The ENGINEER will conduct an interactive review meeting with the OWNER to review the Draft EPP and garner input from the City on the various sections of the Draft EPP.
- 3.6 FINAL EPP – incorporation of comments from DRAFT Emergency Preparedness Plan Workshop with the OWNER and deliver electronic copy of the FINAL EPP to the OWNER in both Word and PDF.
- 3.7 Assist OWNER in submitting the EPP and implementation timeline to TCEQ by March 1, 2022 for the OWNER to be in compliance.

Additional Services:

TASK SS1.0 Alternate Power Options

The ENGINEER will provide additional services as directed by Owner to complete the Alternate Power Options of the EPP if the Critical Load Status application is denied or if the OWNER directs for additional alternate power supply options such as permanently installed or portable generators for critical load facilities or applying for mutual aid programs.

- Deliverables: DRAFT Alternate Power Options of Emergency Preparedness Plan
FINAL Alternate Power Options of Emergency Preparedness Plan
- Meetings: Options Planning Meeting
Critical Load Facility Site Visits



Assumptions:

- ENGINEER will utilize the following templates:
 - “Community Water System Emergency Response Plan Template” for the ERP provided by EPA for “Small System”.
 - Emergency Preparedness Plan Template for the EPP provided by TCEQ.
- ENGINEER will NOT perform quantitative analysis for the ERP based on criteria set forth by the EPA. ENGINEER will not submit the ERP to the EPA, only assist the OWNER in providing a certification letter notifying the EPA of the completion of the ERP.
- ENGINEER will perform modeling and planning services utilizing an export of the OWNER’s existing water system model in EPANET.

Time Period for Performance

Time periods for performance of the SERVICES are as follows:

TASK 1.0	6 months
TASK 2.0	Complete by December 31, 2021
TASK 3.0	6 months
TASK 3.1 - 3.2	Complete by November 1, 2021
TOTAL	6 months

Method of Payment

The Owner shall compensate Engineer on a lump sum basis in accordance with “EXHIBIT B” Fee Summary for the provided Basic Services described herein. Invoices shall be submitted monthly by the Engineer, in a format acceptable to the Owner, based upon the percentage of SERVICES completed to date. The Engineer shall not exceed the stated fee amount without written approval from the Owner. The Engineer shall seek written approval for any SERVICES outside of the stated scope before performing said SERVICES.



PROVENANCE
ENGINEERING
Rooted to Be Uniquely Different

EXHIBIT - B





CITY OF STEPHENVILLE
EMERGENCY RESPONSE AND PREPAREDNESS PLAN
PROFESSIONAL SERVICE FEE SUMMARY



PROVENANCE
ENGINEERING

Task 1.0 - Project Management	
Project Setup	\$ 950
1.110 Communication with OWNER	\$ 640
1.120. Progress Management	\$ 640
1.130. Kick-off Meeting	\$ 2,200
1.140. QA/QC & Internal Review	\$ 1,310
1.150. Project Closeout	\$ 630
Sub-Total	\$ 6,370
Task 2.0 - Emergency Response Plan	
2.100. Utility Information	\$ 3,225
2.200 Resilience Strategies	\$ 3,225
2.300. Emergency Plans and Procedures	\$ 11,640
2.400. Mitigation Actions	\$ 3,800
2.500. Detection Strategies	\$ 3,800
2.600. Workshop	\$ 2,870
2.700. Compile Exhibits	\$ 2,440
2.800. Finalization	\$ 2,470
Sub-Total	\$ 33,470
Task 3.0 - Emergency Preparedness Plan (SB3)	
3.100. Determine Critical Load	\$ 4,000
3.200. Apply for Critical Load Status	\$ 9,090
3.300. Water System Modeling	\$ 10,300
3.400. Section1 Introduction	\$ 310
3.500. Section 2 Description of Water System	\$ 1,240
3.600. Workshop	\$ 2,870
3.700. Finalization	\$ 3,380
Sub-Total	\$ 31,190
Base Services for EMP & EPP	\$ 71,030
Total Fee Proposal	\$ 71,030