

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
ENGINEERING & PLANNING PROJECT NO. 2024-10002  
CITY OF TOMBALL  
HUFSMITH WATER LINE EXTENSION (16-INCH)**

**THE STATE OF TEXAS           §  
                                          §  
COUNTY OF HARRIS         §**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Oller Engineering, Inc. ("Engineer").

**WITNESSETH:**

WHEREAS, the City desires to extend a 16" water line along E. Hufsmith in order to increase deliverable volume of water to increase capacity for peak hourly demand and provide distribution capacity to maintain elevate storage tank water levels and increase fire flow capability as described in the 2023 Water Master Plan (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I.  
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

**SECTION II.  
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

**SECTION III.  
OWNERSHIP OF WORK PRODUCT**

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

**SECTION IV.  
TIME FOR PERFORMANCE**

The time for performance is an estimated 45 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

**SECTION V.  
COMPLIANCE AND STANDARDS**

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

**SECTION VI.  
INDEMNIFICATION**

**To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.**

**SECTION VII.  
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed **\$346,382**, including reimbursable expenses as identified in Exhibit "A".

**SECTION VIII.  
INSURANCE**

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

**SECTION IX.  
TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

**SECTION X.  
ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Engineer at the following address:

Oller Engineering, Inc.  
Attention: Rich Oller, PE, CPM  
2811 Loop 289, Suite 17  
Lubbock, Texas 79423

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball  
Attn: Project Manager  
501 James Street  
Tomball, Texas 77375

**SECTION XI.  
LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.  
SUCCESSORS AND ASSIGNS**

The City and Engineer bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.  
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.  
MODIFICATIONS**

This instrument, including Exhibits A and B, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

**SECTION XV.  
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.  
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.  
PAYMENT TO ENGINEER FOR SERVICES AND  
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**XVIII.**  
**MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

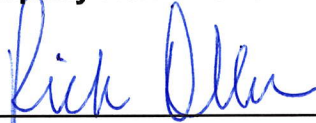
E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Company Name: Oller Engineering, Inc.**



Name: Rich Oller, PE

Title: President

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
David Esquivel, City Manager

ATTEST:

\_\_\_\_\_  
Tracylynn Garcia, City Secretary

## Exhibit A

### **SCOPE OF PROFESSIONAL SERVICES**

**For**

### **City of Tomball Huffsmith Road 16-inch Water Line Extension**

**January 15, 2024**

**Project Intent:** This project is intended to extend and provide a line size upgrade to increase deliverable volume of water to increase capacity for peak hourly demand and provide distribution capacity to maintain elevated storage tank water level and increasing fire flow capability as described in the 2023 Water Master Plan.

Project Goals & Objectives: The goals of the project are to construct a new 16-inch water line to meet the demands of the distribution system for future growth and fire flow requirements.

Risk & Conflict Issues:

**The risks that are evident in completing this design and construction are:**

- Constructing a line adjacent to an existing water line while maintaining the existing water line in service.
- Drainage and erosion control of the ditches during and after construction.
- Existing utilities along the west side of Huffsmith from the drainage channel to N. Cherry/Ulrich Road.
- Oil/gas lines conflicts shall be researched and located with available data sources.

Specification Sections Required:

- Administrative
- Summary of Work
- Use of Premises
- Change Order Procedures
- Measurement & Payment
- Schedule of Values
- Coordination Meetings
- Submittal Procedures
- Reference Standards



## Exhibit A

- Construction Schedule
- Contractor's Quality Control
- Inspection Services
- Testing Laboratory Services
- Mobilization
- Traffic Control & Regulation
- Tree & Plant Protection
- Trapping Sediment & Stormwater Inlet Protection
- Waste Material Disposal
- Excavation in Public Right-of—Ways
- Restoration of Site Improvements
- Project Record Documents
- Topsoil
- Hydro Mulch Seeding
- Project Cleanup
- Railroad bore & permitting
- Piping Materials
- Valves & Fittings
- Wet-Connections
- Fire Hydrants
- Flushing and Pressure Testing
- Line Chlorination & Bac-T sampling
- Roadway Repair
- Backfilling and Bedding

### Identify all the Design Tasks:

The design tasks are:

- Coordinate and provide a topo survey of the alignment of the route for the 16-inch water line replacement;
- Review City standards for water line placement including all offset clearances and bedding requirements.
- Public outreach and communication of proposed project and the conflicts associated with traffic movement and control.
- Design the tie-in at either end of the 3700 feet of new line to existing 12-inch lines.
- Prepare route and alignment plans of the 16-inch line identifying conflicts.
- Prepare drainage control plans for project.
- Prepare details of water line laying requirements, tie-ins, typical details for fittings and valves, fire hydrant details and locations.
- Railroad bore and permitting requirements.
- Prepare final grading design and sodding of area.
- Design flushing details for chlorinating and flushing the new line.
- Details of final cleanup and grading for project areas.

## Exhibit A

### Identify What is Not Covered in the Scope:

The items not included in the scope are:

- Utility relocation or alignment outside the existing Right-of-Way is not included in the overall design.
- No drainage design improvements, other than surface drainage as existing.
- No roadway improvements, only repairs.
- No branch lines off the 16-inch replacement line.
- No highway bores, only Railroad.

For and in consideration of the services rendered by Engineer, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed **\$346,382.00**, including reimbursable expenses as identified in Exhibit "A".