

**SUPPLEMENTAL 2  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
CONSULTANT SERVICES  
RELATED TO  
PROJECT NO. 2021-10037  
CITY OF TOMBALL  
S. PERSIMMON WATER LINE REPLACEMENT**

**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, Consultant represents that it is capable of providing and qualified to provide professional services to the City and desires to perform the same;

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

**SECTION I.  
SCOPE OF AGREEMENT**

Consultant 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 Consultant compensation as stated in the sections to follow.

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

Consultant shall do all things necessary to render the services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant 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**

Consultant agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Consultant 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 Consultant's completion of the services which will result in the production of such instruments and Consultant'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 Consultant from continuing to use those processes, analyses and data.

### **SECTION IV. TIME FOR PERFORMANCE**

The time for performance is an estimated 365 calendar day duration beginning from execution date of this Agreement. Upon written request of Consultant, 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 Consultant has no control.

### **SECTION V. COMPLIANCE AND STANDARDS**

Consultant 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 Consultant'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 Consultant pursuant to this Agreement, the City shall pay Consultant 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 \$46,706.84, including reimbursable expenses as identified in Exhibit "A", for a total contract amount not to exceed \$139,256.84.

**SECTION VIII.  
INSURANCE**

Consultant shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," 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 Consultant. Upon receipt of such notice, Consultant 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, Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Consultant 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 Consultant at the following address:

Oller Engineering, Inc.  
Attn: Rich Oller  
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, Consultant has been advised by the City and Consultant 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 Consultant may become entitled to hereunder and the total sum that the City shall become liable to pay to Consultant 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 Consultant 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 Consultant 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**

Consultant 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, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the Scope of Work, 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, Consultant 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.

**SECTION XVIII.  
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES**

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

**SECTION XIX.  
MISCELLANEOUS PROVISIONS**

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

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

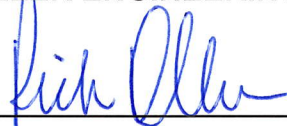
C. Consultant further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be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

D. 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.

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

EXECUTED on this 9 day of May, 2023.

**OLLER ENGINEERING, INC:**



Name: Rich Oller

Title: Owner/ Project Manager

**CITY OF TOMBALL, TEXAS**

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

ATTEST:

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

# WORK CHANGE DIRECTIVE

Project Number OEI Proj. # 1030.21.01

Project Title S. Persimmon Water Line Extension

No.: City Proj. # 2023-10

Date of Issuance: 5/4/23

TO:  
(CONTRACTOR/OWNER) City of Tomball, TX

- Change in location to accommodate new storm sewer & roadway improvements.
- Change in alignment to accommodate CenterPoint Electrical tower located within the water line easement.
- Bid Phases services.
- Amendment to original contract to include Construction Management & Inspection services.

Description:

Realignment to miss the existing CenterPoint overhead tower on S. Persimmon and stay within the dedicated Right-of-Way of the roadway. Line was realignment to be partially in the drainage ditch on east side of S. Persimmon and transition out of the ditch to the high side avoiding placement in the roadway and conflicts with the existing storm sewer.

Bid Phase Services

Amendment to contract for Construction Management/Inspection

Purpose of Work Change Directive: Realignment to avoid CenterPoint overhead tower.

Bid Phase Services.

Amendment to include Construction Management and Inspection of water line placement.

Attachments: (See sheet C003 of Plan Set)

If the above work results in a change in the Contract Price or Contract Times, any request for a Change Order based thereon will involve one or more of the following methods of determining the effect of the change(s).

Method of determining change in  
Contract Price:

Method of determining change in  
Contract Times:

Unit Prices

Additional Fees

Lump Sum

As Stipulated in General Conditions

Other \_\_\_\_\_

CONTRACTOR's Records

Owner's Records

DESIGN PROFESSIONAL's Records

City's Records

Other \_\_\_\_\_

Estimated increase (decrease) in Contract Price:

**\$ 46,351.84**

If the change involves an increase, the estimated Amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:

Substantial Completion **N/A** days;

Final Completion: \_\_\_\_\_ days.

If the change involves an increase, the estimated times are not to be exceeded without further authorization.

Recommended:Recommended:

Recommended:

Rich Oller, P.E.

DESIGN PROFESSIONAL	Construction Manager	City/Owner
By (Authorized Signature)	By (Authorized Signature)	By (Authorized Signature)

Distribution:  City/Owner  Design Professional  
 Contractor  Consultant  
 Construction Manager  Other

Original Contract Additional Services:

Negotiations with CenterPoint for placement of waterline near one leg of their existing overhead tower. 3-reviews by CenterPoint prior to obtaining final acceptance with realignment of the originally proposed water line.

Additional Services to acquire approval & realignment from CenterPoint for placement of water line:

\$ 5,181.84

Contract Amendment for Construction Management S. Persimmon Water Line Extension:

Bid Phase Services	\$ 2,300.00
Construction Management /On-site Inspection	<u>\$39,225.00</u>
Total Contract Amendment & Additional Services	\$46,706.84





## CITY OF TOMBALL, TEXAS

Proposal For

CONSTRUCTION MANAGEMENT-INSPECTION

SOUTH PERSIMMON WATER LINE EXTENSION

### Purpose:

The City has received bids for the construction of approximately 2700 feet of 12-inch C900 PVC water line to extend along the east side of S. Persimmon completing a looped water line. This proposal shall provide Construction Management and inspection oversight of the actual construction process. These services shall document the methodology used by the contractor, locate the pipe and all fittings and valves using ARC-GIS technology.

### Scope of Services:

OEI shall provide on-site observation of the construction process. OEI is proposing that 3 days per week are scheduled for on-site observation and documentation. OEI shall use Golden Arrow Esri technology to precisely locate the line and all fittings & valves along with tie-in points for archiving into the City's GIS system. Proper bedding shall be confirmed and monitored to document placement along the length of the placed water line. Conflicts encountered shall be documented and collected using GIS technology and provided to City. OEI shall work with the City and the Contractor to resolve interpretation of plans and specifications for the proper installation of the water line. All contractor questions shall be handled by OEI and communicated to the City. All air testing of the installed water line shall be observed and documented by OEI including the proper disinfection of the newly constructed line. All submittal reviews shall be completed by OEI with copies of all materials used in the construction provided to the City and uploaded into GIS. All Pay Requests shall be reviewed by OEI and approved for payment and provided to the City for processing. As Constructed drawings shall be prepared at the end of the project and provided to the City along with all material submittal data. OEI shall coordinate

service interruptions with the City prior to any isolation of service related to this project.

Services Not Included:

- Daily inspection is not included herein only periodic, 3-days per week maximum.
- OEI shall not act as the project superintendent. The Contractor shall direct and schedule all activities required for the construction of the project.
- OEI is providing on-site observation and documentation according to the plans and specifications, there is no warranty provided by OEI to the constructed improvements.

Fees for On-Site Inspection & Construction Management:

The Professional Fee for providing this service is \$39,225.00

This is based on a 120-day construction time using 3-days per week on-site and Construction Management of reviews of submittals, processing Pay Requests and providing RFI's as required from the Contractor. All collected data shall be collected using ARC-GIS and all data shall be provided to City for uploading into the City's GIS system.

Invoicing:

Invoices shall be prepared monthly and submitted to the City for payment. This is a lump sum project and shall be billed as follows:

Pre-Construction Meeting w/Contractor & City	\$ 3,000.00
First Month construction	\$ 9,806.25
2nd Month Construction	\$9,806.25
3 <sup>rd</sup> month of Construction	\$9,806.25
Final Month of Construction & Submittal of All data and GIS files	<u>\$6,806.25</u>
Total Construction Management & Inspection	\$39,225.00