

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2023-10008
CITY OF TOMBALL
PINE STREET ELEVATED STORAGE TANK REHABILITATION**

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 Freese & Nichols, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to contract for the design of Pine Street Elevated Storage Tank Rehabilitation (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 365 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 Consultant 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 \$73,943, including reimbursable expenses as identified in Exhibit "A".

SECTION VIII. INSURANCE

Engineer 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 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 Consultant at the following address:

Oller Engineering, Inc.
Attn: Rich Oller
2901 Wilcrest Drive
Houston, Texas 77042

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, 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.

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 24 day of October, 2022.

Oller Engineering, Inc.:



Name: Rich Oller

Title: President/ Project Manager

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Doris Speer, City Secretary

ENGINEER:**OEI**By: Rich Oller, PETitle: Project Manager | CEODate Signed: 10/24/22

Address for Giving Notices:

2901 Wilcrest Drive, Suite 550
Houston, TX 79423**OWNER:****CITY OF TOMBALL**

By: _____

Title: _____

Date Signed: _____

Address for Giving Notices:

501 James St
Tomball, TX 77375**I. PAYMENTS TO ENGINEER**

A. Owner shall pay Engineer for services for Project as follows:

Percentage	Phase	Amount
	Tank Evaluation and Preliminary Design	\$6,040.00
	Final Design and TCEQ Submittal for Project Approval	\$30,650.00
	Bid Management and Bid Award Recommendations	\$8,770.00
	Construction Management and Project Close-Out	\$21,788.00
	Total Engineering Design Fee	\$67,248.00
	TCEQ Administration/Correspondence	Hourly
	Direct Expenses	\$6,695.00
	TOTAL PROJECT FEES	<u>\$73,943.00</u>

B. Invoicing shall follow this table as percent complete by phase and be invoiced monthly as work is completed by task.

II. REIMBURSABLE EXPENSES AND HOURLY RATES

A. Reimbursable Expense Schedule

8" x 11" Copies/Impression	\$0.25/page
11" x 17"	\$0.75/page
Blueprint Copies	\$1.50/sq. ft.
Reproducible Copies (Mylar)	\$3.50/sq. ft.
Reproducible Copies (paper)	\$2.00/sq. ft.
Mileage (auto)	\$1.00/mile
Soil Sampling	at cost x 1.15
Postage	at cost
Shipping/Delivery	at cost x 1.10
Meals and Lodging	at cost x 1.10
Geotechnical Cores and Report	at cost x 1.50
Concrete Cylinders (foundation)	at cost x 1.50
Surveying (subconsultant)	at cost x 1.20

Standard Hourly Rates Schedule Professional Staff:

Principal	\$250.00/hr
Project Manager	\$190.00/hr
Project Engineer	\$185.00/hr
EIT	\$165.00/hr
CAD Operator	\$130.00/hr
GIS Operator	\$130.00/hr
Inspection Services	\$120.00/hr
Accounting	\$112.00/hr
Clerical	\$80.00/hr

III. SUBCONSULTANTS

Table of Consultants & Fees

Testing Laboratory	\$960.00 Budget for Lead Testing of paint
Total	\$960.00

IV. INVOICES

Invoices for services are due and payable within 30 days of receipt. If Owner fails to pay an invoice when due, Engineer shall be allowed to charge 10% per annum (or the maximum interest rate permitted by law if less) to the date paid. Additionally, Engineer may after giving (7) days' notice, suspend further services hereunder until all amounts due are paid in full. Payments received shall be credited first to interest, then to principal. In the event of a disputed invoice, only the amount in dispute may be withheld from payment and all undisputed amounts will be paid.

V. TERMINATION

In the event of termination or cancellation of the project prior to completion, Engineer shall be entitled (whether termination was with or without cause) to be paid for all services to date of termination and a reasonable amount for services and expenses directly attributed to termination both before and after the effective date of termination.

VI. LEGISLATIVE ACTION

In the event of legislative actions, any new taxes, fees, or cost attributable thereto shall be paid by Owner as a reimbursable expense.

EXHIBIT "A"

SCOPE OF PROFESSIONAL SERVICES For

The following are the services to be performed by the Engineer. The Scope is a general description of tasks that will be performed in the completion of the project,

- Site visit to review site and note potential construction/design concerns/conflicts;
- Review existing tank inspection reports provided by City;
- Coordinate and conduct a Design kickoff meeting with City;
- Review costing systems with City and recommend based coating system on experience;
- Determine the optimum time for taking tank offline;
- Identify contractors in area for painting elevated tanks;
- Develop public notices of painting operations for City to hand out and post;
- Develop drawings details for replacement of accessories on tank;
- Develop schematics of tank from as-builts for illustration in specifications;
- Prepare specifications for tank sandblasting, primer application and final coats interior & exterior;
- Issue construction drawings and specifications incorporating any addenda/post on CivCast;
- Host Construction Pre-Bid Meeting (If applicable);
- Review Contractor bid packages;
- Review, evaluate and certify bid tabulations and bidder qualifications;
- Provide recommendations for construction to Owner in an official letter for Council Approval;
- Conduct a Pre-Construction Conference with Owner & Contractor;
- Process Pay Request(s);
- Process and manage City approved Work Change Directives;
- In-field project check-ins as applicable;
- Issuing of project close out documents upon acceptance of project as complete by City;
- As-built submittal to City for record purposes.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Risk Strategies 12801 North Central Expy. Suite 1725 Dallas, TX 75243	CONTACT NAME: Steve Brown	FAX (A/C, No):	
	PHONE (A/C, No, Ext): 678-690-5996	E-MAIL ADDRESS: RSCcertrequest@risk-strategies.com	
INSURED Oller Engineering, Inc. 2811 S Loop 289 Ste. 17 Lubbock TX 79423	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Travelers Casualty and Surety Company		19038
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:** 70927138**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input type="checkbox"/> N / A						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		✓	107169888	10/20/2022	10/20/2024	Per Claim/ Annual Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation in favor of certificate holder on all policies.

CERTIFICATE HOLDER

Master Certificate

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

RSC Insurance Brokerage

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ACORD 25 (2016/03)

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