

ENGINEERING SERVICES AGREEMENT

This agreement effective the 9th day of September, 2021, between the City of Tomball (hereinafter referred to as "Owner") and Oller Engineering, Inc. (hereinafter referred to as "Engineer"), for professional engineering services, hereinafter referred to as the S. Persimmon St. Water Line Replacement as further detailed in the Scope of Services attached hereto as Exhibit "A".

SECTION 1 – SERVICES

- 1.1 Engineer agrees to consult and define and clarify Owner's requirements for a specific project; to advise Owner as to the necessity of providing data or services; to identify and analyze any governmental requirements, including but not limited to, mitigating measures identified in any environmental assessment; to identify and evaluate alternate solutions available to Owner after consultation with Owner as engineering services, all as further outlined in the written Scope of Services attached hereto as Exhibit "A" (the "Scope of Services") and incorporated herein for all purposes, and Owner agrees to pay Engineer the amounts of money for the services and at the times specified on Exhibit "A".
- 1.2 The parties agree that the Scope of Services sets forth the items to be performed by the Engineer under the terms of this agreement, and that the Engineer is not obligated to perform any services which are not specified upon the Scope of Services and the Scope of Services may not be modified by either of the parties hereto unless such modifications are in written form and signed by the duly authorized representatives of both parties and specifically designed as an amendment to the Scope of Services.
- 1.3 Engineer is obligated to use the standard of care for all professional engineers which is designated to be the care and skill ordinarily used by members of the engineer's profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, expressed or implied, of any kind under this agreement, or otherwise, in connection with Engineer's services, and Engineer neither guarantees the performance of any contractor, nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents, and Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier regarding the work to be performed, including any decision made or interpretations or clarifications of contract documents given by the Owner without consultation and advice of the Engineer.
- 1.4 Engineer assumes no responsibility for the accuracy of opinions regarding the total project cost, and Owner understands that opinions of total project costs are good faith estimates only and represent the opinion of the Engineer. Engineer shall be responsible for the technical accuracy of its services and documents, and Engineer shall correct any deficiencies discovered therein without additional compensation except to the extent such action is directly attributable to deficiencies in information furnished by the Owner.
- 1.5 The Engineer shall have no responsibility for the handling of, removal, or disposal of hazardous materials in any form at the site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyls (PCBs), or any other toxic substance as currently defined by law or as may be defined in the future by law, and Engineer shall never be an "arranger," "operator," "generator," or "transporter," as those terms are now or hereafter may be defined by law.

SECTION 2 – OWNER'S RECOGNITION OF RISK

- 2.1 Owner shall be responsible for, and Engineer is entitled to rely upon, the accuracy and completeness of all instructions, reports, data, or other information, which may be furnished by Owner to Engineer. Owner recognizes that environmental, geotechnical, and surveying conditions may vary from those encountered at the time and locations where data has been obtained, either by the Owner or the Engineer, and that the limitation on available data or the furnishing of incomplete or inaccurate data may result in a level of uncertainty with respect to the investigation of various conditions, despite the use of the professional standard of care. The risk (which is inherent in any project) may result in increased project cost, and Owner agrees that Engineer shall have no liability for such increased costs.

2.2 Owner-furnished data that may be relied upon by Engineer is limited to printed copies of the material. No electronic media format of text, data or graphics shall be deemed to be reliable, and Owner agrees to cause to be converted to printed copies all formats of electronic media.

SECTION 3 – USE OF DOCUMENTS

3.1 All documents furnished by Engineer are deemed to be instruments of service for use on this specific project. Engineer retains all ownership and property interests therein (including the right of reuse at the discretion of Engineer) whether or not the specific project, which is the subject of this contract, is completed. The documents are not intended or represented to be suitable for any type of reuse by Owner, and in the event of any such reuse, such reuse will be at Owner's sole risk and without liability or legal exposure to Engineer, and Owner shall indemnify and hold harmless Engineer and all of Engineer's employees, agents and parties in privity with it from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from any such reuse.

SECTION 4 – SUSPENSION

4.1 If Engineer's agreed upon services under this contract are delayed or suspended in whole or in part by Owner, or if Engineer's services are extended by a contractor's actions or inactions for more than 180 days from the various time periods from the estimated time table as contained in the bid documents, through no fault of Engineer, Engineer shall be entitled to an equitable adjustment of the rates and amounts of compensation to reflect the incremental costs incurred by Engineer in connection with, among other things, the delay or suspension and the reactivation of this agreement and the extension of the time for performance. This shall be determined by the Cost of Living Adjustment (COLA) published at this time.

SECTION 5 - OWNER'S RESPONSIBILITIES

5.1 Owner shall provide to Engineer full criteria and full information as to Owner's requirements for this project, including design objectives, opinions of independent consultants, any constraints, and performance requirements. Owner shall also furnish budgetary limitations, if applicable, and shall furnish copies of any and all design and/or

construction standards which Owner will require Engineer to include in any drawings or specifications. Owner shall also provide full, complete and safe access, whether upon public or private lands, to the project site.

5.2 Owner shall also provide to Engineer additional project related information and data as is reasonable required by Engineer, including but not limited to, property descriptions, zoning, deed, or any restrictions, information regarding easements, rights of way or any other special surveys or data, results of any explorations and/or tests of subsurface conditions, and the results of any environmental assessment, audit, or investigation.

5.3 Owner shall, through its designated representative, prior to commencement of services hereunder, and continuing through the entire contract term, notify of any possible health or safety hazard known to or suspected by Owner which might exist on or near any site where services are being performed under this agreement and no known hazards currently exist.

5.4 Owner shall, through its designated representative, provide to Engineer, on plans to be furnished by Owner to Engineer, the locations of surface and subsurface structures, such as pipes, tanks, cables and utilities which are known to or suspected by Owner. Owner shall give Engineer prompt written notice of any suspected defect in Engineer's services and allow Engineer a reasonable time period in which to cure such defect.

5.5 Owner shall also provide reviews, approvals, and permits from any and all governmental authorities having jurisdiction to approve all phases of the project covered by this agreement. Owner shall further provide accounting, bond and financial advisory, independent cost estimating, insurance counseling services, legal and auditing services, and placement and payment for advertisement for bids and appropriate publications, as well as inspection and monitoring services to verify contractor is complying with all laws, regulations, and taking all necessary safety precautions.

SECTION 6 - ALLOCATION OF RISK

6.1 To the fullest extent permitted by law, and notwithstanding any other provision of this agreement, Engineer and Engineer's officers, directors, partners, employees, agents, consultants and anyone in privity with Engineer shall have no

liability for any and all claims, losses, costs, or damages whatsoever arising out of or resulting from or in any way related to the project the subject of this contract, unless the claim, cost, loss or damage result from negligence, professional errors or omissions of the Engineer or Engineer's officers, directors, partners, employees, or anyone in privity with Engineer, and Engineer expressly disclaims, with the full approval and consent of the Owner all special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the services being performed under this contract unless from said negligence, professional errors or omissions.

SECTION 7 - INSURANCE

7.1 Engineer shall procure and maintain insurance as follows:

Workers Compensation – statutory;
General Liability - \$1,000,000;
Automobile Liability - \$500,000/\$500,000;
Certificates of insurance and evidencing the coverages shall be delivered to Owner prior to commencement of Engineer's services.

7.2 Owner shall procure and maintain insurance as follows:

Workers Compensation – statutory
General Liability - \$1,000,000;
Automobile Liability - \$500,000/\$500,000;
Certificates of insurance and evidencing the coverages shall be delivered to Engineer prior to commencement of Engineer's services.

7.3 Owner shall require contractors to purchase and maintain general liability and other insurance listing Engineer and Engineer's consultants as additional insureds.

7.4 All policies of property insurance shall contain provisions to the effect that Engineer and Engineer's consultants' interests are covered, and that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

7.5 Owner shall be named as an additional insured on Engineer's Commercial General Liability Policy as required in paragraph 7.1.

SECTION 8 - TERMINATION

8.1 The obligation to provide further services under this agreement may be terminated:

a. For cause:

1. By either party hereto upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this agreement.

Notwithstanding the foregoing, this agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice; provided however, that if such substantial failure cannot be reasonably cured within such 30 days 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 from the date of receipt of the notice.

2. By Engineer upon seven days written notice to Owner if Engineer believes that Engineer is being requested to furnish or perform services contrary to Engineer's responsibilities as a licensed professional, or if there are delays or suspension for more than 90 days in the project for reasons beyond Engineer's control. In such event, Engineer shall have no liability to Owner on account of such termination.

b. For convenience

By owner effective upon receipt of notice by Engineer.

SECTION 9 - MISCELLANEOUS

9.1 This agreement is to be governed by the laws of the State of Texas, and shall lie in Harris County, Texas

9.2 The parties hereto are not only binding themselves, but bind their partners, successors, executors, administrators, and legal representatives to all of the covenants, agreements, and obligations as contained herein.

9.3 Neither Owner nor Engineer may assign, sublet, or transfer any rights hereunder or interest in this agreement without the written consent of the other

except to the extent that any assignment, subletting or transfer is mandated or required by law. Even in the event that such assignment, subletting or transfer is mandated or required by law, no assignment will release or discharge the assignor from any duty or responsibility hereunder.

9.4 All duties and responsibilities undertaken pursuant to this agreement is for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any third or other party. Nothing herein shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer or any contractor, subcontractor, supplier, or any other individual or entity, or for any surety for them.

9.5 Any notice required under this agreement will be in writing, addressed to the appropriate party at its address on the signature page hereof and shall be effective if placed in the United States mail, postage prepaid, and properly addressed.

9.6 All expressed representations, indemnifications, or limitations of liability included in this agreement will survive its completion or termination for any reason.

9.7 Any provision or part of this agreement held to be void or unenforceable shall be deemed stricken, and all remaining provisions shall continue to be valid and binding.

9.8 Non-enforcement of any provision by either party hereto shall not constitute a waiver of that provision, nor shall it affect its later enforceability.

9.9 Nothing herein shall establish an exclusive relationship between the Owner and Engineer which would require the Engineer to perform, without contract, future services.

9.10 This document shall be deemed to contain such words of formal construction so as to fully implement the intent of the parties hereto.

SECTION 10 – NON- BINDING MEDIATION

10.1 The parties hereto agree that for any dispute which might arise between them regarding the interpretation of this contract, or any other dispute which might be the subject of the services to be performed by Engineer under the terms of this agreement, prior to the filing of any law suit in a

court of law the dispute shall be submitted to non-binding mediation by a qualified mediator agreed upon by both parties.

10.2 Upon the arising of a dispute under the terms of this Agreement (and after the expiration of any cure period as provided herein) either party to this Agreement may notify the other party of the desire for the dispute to be mediated. The parties agree to cooperate in the selection of the mediator and to mediate the dispute in good faith prior to filing suit.

10.3 The parties agree that all costs and expenses associated with the mediation shall be borne equally.

10.4 The parties agree to attempt non-binding mediation in good faith before proceeding to seek legal redress under the laws of the State of Texas.

SECTION 11 - ENTIRE AGREEMENT

11.1 This agreement, together with the exhibits hereto, constitutes the entire agreement between the Owner and Engineer and supersedes all prior written or oral understandings. This agreement may only be modified, amended, supplemented or cancelled by a duly executed written instrument between the parties.

This agreement is entered into and effective between the parties on this the 9th day of September, 2021.

ENGINEER:**OEI**By: Darby Adams, EITTitle: Project Manager | Director
of Environmental Design &
ComplianceDate Signed: 9/9/2021

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
	In-field Site Evaluation and Preliminary Design	\$9,660.00
	Final Design and TCEQ Submittal for Project Approval	\$38,165.00
	Bid Management and Bid Award Recommendations	\$8,675.00
	Construction Management and Project Close-Out	\$13,120.00
	Total Engineering Design Fee	\$69,620.00
	TCEQ Administration/Correspondence	Hourly
	Direct Expenses	\$3,380.00
	TOTAL PROJECT FEES	<u>\$73,000.00</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 1.15

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	\$165.00/hr
GIS Operator	\$175.00/hr
Inspection Services	\$120.00/hr
Accounting	\$110.00/hr
Clerical	\$90.00/hr

III. CONSULTANTS

Table of Consultants & Fees

N/A	\$--
Total	\$--

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.

VII. DESIGNATED REPRESENTATIVES

If a representative is designated hereon, such individual shall have authority to transmit instructions, receive information, and render decisions relative to the project on behalf of each respective party.

DESIGNATED REPRESENTATIVE

Darby Adams, EIT

Name

Project Manager | Director of
Environmental Design & Compliance

Title

2901 Wilcrest Drive, Suite 550
Houston, TX 79423

Address

darby.adams@oei-eng.com

E-mail Address

361-688-5299

Phone

Fax

DESIGNATED REPRESENTATIVE

Name

Title

501 James St.
Tomball, TX 77375

Address

E-mail Address

Phone

Fax

APPROVAL AND ACCEPTANCE incorporates this document as part of the Agreement. Engineer is authorized to begin performance upon its receipt of a copy signed by Owner.

ENGINEER:

Oller Engineering, Inc.

 9/9/21

Signature

Date

Darby Adams, EIT

Name

Project Manager | Director of
Environmental Design & Compliance

Title

OWNER:

City of Tomball

Signature

Date

Name

Title

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;
- Prepare proposed line alignment details in existing easement and identify all utilities with crossing conflicts as well as other obstructions along the alignment;
- Coordinate and conduct a Design kickoff meeting with City;
- Design connection and testing points to segment line as well as isolation valve locations with valve vaults with City staff review and comments;
- Design tie-ins at Lizzie Lane and at Sutton Lane;
- Prepare plan and profile drawings for 12-inch line with crossing details for utilities as needed;
- Develop drawings details for trench bedding using jointed pipe (Pipe Material Option 1);
- Develop drawings details for trench bedding using fused pipe (Pipe Material Option 2);
- Develop drawing set for construction for City review and comment before finalizing;
- Prepare specifications for pipe installation with crossing details for utilities as needed and as per existing City Standards;
- Prepare Preliminary Engineer's Report (PER) with projected supply demands and hydraulic calculations as per TCEQ requirements outlined in 30 TAC Chapter 290;
- Submit PER for review to TCEQ and respond to questions/comments for overall project approval;
- 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 TCEQ as per 30 TAC Chapter 290 requirements.