

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2014-10031
CITY OF TOMBALL
FM 2920 ACCESS MANAGEMENT AND IMPROVEMENTS**

**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 design the relocation of utilities along FM 2920 for the pending roadway improvements (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 \$765,541, 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 Consultant at the following address:

Oller Engineering, Inc.
Attention: Rich Oller, PE
2811 South 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, 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 of 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.

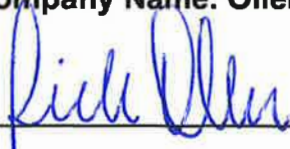
E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, 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: Principal

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Thomas Harris III, City Secretary

EXHIBIT A

Scope of Professional Services for Utility Relocations for TxDOT FM 2920 (Main Street) Roadway Improvements

1. Project Overview

The Consultant shall provide professional engineering, design, coordination, and support services for the relocation of water, sanitary sewer, and natural gas utilities within the City of Tomball, Texas, for the FM 2920 roadway improvements. The purpose of this project is to adjust, replace, or relocate existing utilities in conflict with proposed TxDOT improvements, associated with the FM 2920 roadway project.

The Consultant's work shall comply with all applicable federal, state, and local regulations, including City of Tomball standards, Texas Commission on Environmental Quality (TCEQ) requirements, Texas Department of Transportation (TxDOT) standards (if applicable), and industry best practices.

2. Basic Services

2.1 Project Management & Coordination

- Attend project kickoff meetings and periodic coordination meetings with the City.
- Develop a project schedule identifying major milestones and submittals.
- Coordinate with City departments, utility owners, TxDOT, private property owners, franchise utilities, and other relevant stakeholders.
- Provide monthly progress reports and maintain communication throughout the project.

2.2 Data Collection & Field Investigation

- Review available record drawings, GIS data, as-builts, and utility maps provided by the City.
- Conduct site visits to verify existing conditions, utility locations, and potential conflicts.



- Prepare a GIS map from the City GIS data showing all utilities for in-field confirmation and preliminary re- routes and alignment.
- Coordinate and manage Subsurface Utility Engineering (SUE) to Quality Levels B and A (if directed by the City). Conduct a “Sweep” report of all utilities in the proposed alignment corridor.
- Identify existing easements, right-of-way limits, and property boundaries relevant to the design.

2.3 Preliminary Engineering & Utility Relocation Analysis

- Identify all utility conflicts and prepare preliminary relocation concepts.
- Evaluate options to minimize service disruptions, reduce construction costs, and maintain operational integrity.
- Prepare a Preliminary Route Analysis Report summarizing findings, alternatives, and recommended relocation strategies.
- Provide preliminary cost estimates for each utility system: water, sewer, natural gas.

2.4 Utility Relocation Design Services

The Consultant shall prepare detailed engineering design for the relocation of the following systems:

2.4.1 Water System

- Design of new water mains, service lines, valves, hydrants, and connections.
- Abandonment or removal of existing waterline segments in conflict.
- All abandoned lines in place shall be identified for GIS mapping updates and filled with grout.
- Ensure compliance with TCEQ Chapter 290 requirements regarding separation distances, materials, and construction.

2.4.2 Sanitary Sewer System

- Design of gravity sewer, manholes, and force mains as required.



- Coordination of bypass pumping requirements during construction.
- Preparation of TV inspection recommendations and necessary rehabilitation measures.
- Ensure compliance with TCEQ Chapter 217 requirements.

2.4.3 Harris County Flood Control District (HCFC)

- Coordination with HCFC on various channel crossings with water lines.
- Plan and profile of proposed crossings with City utilities.

2.4.4 Natural Gas System

- Coordinate with the City-owned gas system or franchise gas utility operator provider.
- Prepare relocation plans for distribution mains and service lines.
- Identify shutoff, tie-in, and pressure testing requirements.
- Ensure compliance with federal pipeline safety regulations (CFR 49, Part 192).

2.5 Construction Documents

- Plan and Profile sheets for each utility.
- Standard details and special details.
- Specifications in City of Tomball format.
- Quantities and Opinion of Probable Construction Cost (OPCC).
- Traffic control considerations in areas where work is within ROW.
- Erosion and sedimentation control plans (SWPPP design if required).

2.6 Permitting & Regulatory Coordination

- Prepare and submit TxDOT utility installation permits (if applicable).
- Assist with TCEQ notifications (if needed).
- Coordinate franchise utility conflict resolution.



- Prepare documentation required for City approvals and interagency reviews.
- BNSF permitting requirements and submittals
- BNSF coordination for approval to cross under and through their established ROW.

2.7 Easement & Land Acquisition Support

- Prepare easement exhibits, metes and bounds descriptions, and right-of-entry documents.
- Assist the City during the negotiation and acquisition process.
- Identify temporary construction easements if required.

2.8 Bidding Phase Services

- Prepare final bid package for City procurement.
- Assist City in posting advertisement on CivCast.
- Respond to bidder questions and prepare addenda.
- Attend pre-bid meeting and assist with bid evaluation.

2.9 Construction Phase Services

- Attend preconstruction meetings and periodic site visits.
- Review shop drawings, RFIs, contractor schedules, and material submittals.
- Provide engineering clarifications and design interpretation as needed.
- Conduct final walkthrough and prepare punchlist documentation.
- Review as-builts and certify record drawings.

3. Deliverables

3.1 Preliminary Phase

- Utility conflict matrix and alternative relocation



- Preliminary Engineering Report (PER)
- Preliminary cost estimates
- 30% and 60% design submittals

3.2 Final Design Phase

- 90% and 100% construction drawings
- Technical specifications
- Final OPCC
- Permit application packages
- Easement documents

3.3 Construction Phase

- Review logs (RFIs, submittals)
- Meeting minutes
- Punchlist and final completion certification
- Record drawings (PDF and CAD)

4. Additional Services (If authorized)

- Environmental investigations (Phase I ESA, cultural resources) if needed.
- Geotechnical investigations as necessary.
- SUE Quality Level A test holes.
- Public outreach or community meetings.
- Construction inspection or on-site resident project representative services.
- Provide onsite inspection during construction.



5. Assumptions

- City will provide available record information.
- City will handle all property acquisition and franchise utility agreements.
- Consultant will prepare design for systems owned by the City; private utilities will design their own relocations unless directed otherwise.
- Work will follow City of Tomball standards unless otherwise approved.

6.0 Risk Mitigation

- Conflicts with other currently unknown utilities or pipelines
- All relocations shall be designed in known City Right-of-Ways, easements, roads or other designated areas as directed by City personnel
- No drainage improvements are herein provided
- No permits to any agencies are expected to be required and are not herein included

7.0 Professional Design Fee

The professional design fee for this project is **\$765,541.00**

SUPPLEMENTAL SCOPE FOR BNSF INCLUDED IN OVERALL PROJECT SCOPE

Utility Crossing Permit – BNSF Railway FM 2920 Utility Relocations

State of Texas

1. Project Overview

The consultant shall provide professional engineering and coordination services necessary to obtain a BNSF Railway Utility Encroachment Permit for a proposed utility crossing beneath the BNSF railroad right-of-way in Texas. Services include engineering design, preparation of BNSF-required documentation, submittal coordination, and responses to comments until permit approval is obtained.

2. Data Collection & Existing Conditions Review

The consultant shall perform the following tasks:

- Review available record drawings, as-built utility information, and public utility maps.
- Obtain BNSF right-of-way maps, property ownership records, and track charts as available.
- Conduct a field visit to verify site conditions, locate existing utilities, identify access constraints, and observe drainage, topography, and railroad facilities.
- Coordinate with One-Call (811) and utility owners for subsurface utility information.
- Confirm BNSF horizontal and vertical clearance requirements and applicable engineering standards.

3. Engineering Design & Technical Requirements

3.1 Utility Crossing Design

- Develop alignment and profile for the utility crossing.
- Design steel casing, carrier pipe, spacers, vents, and appurtenances.
- Provide hydraulic, structural, or geotechnical analysis as needed.
- Ensure compliance with BNSF's Utility Accommodation Policy and Requirements.

3.2 Plan and Profile Drawings

SUPPLEMENTAL SCOPE FOR BNSF INCLUDED IN OVERALL PROJECT SCOPE

Prepare permit-ready drawings including:

- Cover Sheet with project description and vicinity map
- Plan view showing railroad tracks, right-of-way, bore pits, and utilities
- Profile showing casing and carrier pipe elevations
- Bore pit details and construction limits
- Standard notes and typical sections

4. Permit Application Documentation

- Completed BNSF Utility Permit Application
- Engineering plans (signed and sealed by a Texas PE)
- Utility owner authorization letters
- Construction work plan and installation method
- Traffic control plan if required
- Contractor insurance requirements
- Geotechnical data (if necessary)
- Environmental compliance forms
- Safety compliance statement

5. Coordination and Submittal Services

- Submit permit package via BNSF's online system.
- Respond to reviewer comments and resubmit.
- Attend coordination meetings.
- Track permit progress and coordinate flagging requirements.

6. Construction Support (Optional)

- Review contractor submittals.

SUPPLEMENTAL SCOPE FOR BNSF INCLUDED IN OVERALL PROJECT SCOPE

- Coordinate with BNSF flaggers and inspectors.
- Site visits for verification.
- As-built documentation.
- Final acceptance coordination.

7. Assumptions & Exclusions

- Environmental assessments excluded.
- Geotechnical investigation may be added as a separate service.
- BNSF fees, flagging costs, and contractor expenses are client responsibilities.
- Construction documents beyond permit needs are excluded unless added later.

8. Deliverables

- Complete BNSF-compliant permit package (PDF)
- Signed and sealed engineering drawings
- Completed application forms
- One coordinated submittal
- Comment response logs and revisions
- Final Permit Approval issued by BNSF