

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT
NO. 2023-10015
CITY OF TOMBALL
RUDOLPH ROAD WATER EXTENSION**

**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 the water line located on Rudolph Road south to the tie-in at E. Hufsmith (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 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 \$49,420.00, 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
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, 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 ___ day of _____, _____.

Oller Engineering, Inc:

Name: Rich Oller, PE
Title: Project Manager

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracy Garcia, City Secretary

EXHIBIT A

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

Phases of Project	Phase	Amount
	Design Plans & Specifications	
I	Preliminary design & Layout	\$7,550.00
II	Preparation of Design Calculations & conflict mitigation	\$4,200.00
III	Plans, Specifications/Contract Documents	\$21,350.00
	Bid Phase	
IV	Prepare Bid advertisement & post to CivCast, Open Bids & evaluate, make recommendation to City, Prepare 3 copies of Contract Documents & deliver to City, Issue Notice of Award & Notice to Proceed	\$4,980.00
	Construction Management	
V	Site visits periodically at critical milestones, creek crossing & connection points	\$8,140.00
	Project Closeout	
VI	Project Closeout Documents	\$3,200.00
	TOTAL PROJECT DESIGN FEES	\$49,420.00

The above amounts shall be billed monthly on a percent complete basis.

II. REIMBURSABLE EXPENSES AND HOURLY RATES

A. Reimbursable Expense Schedule (Typical):

8" x 11" Copies	\$0.25/page
Reproducible Copies (mylar)	\$3.00/page
Reproducible Copies (paper)	\$2.00/page
Mileage (auto)	\$0.95/mile
Field Truck Daily Charge	\$100.00/day
Mileage (field truck)	\$0.58/mile
Field Survey Equipment	\$155.00/day
Soil Sampling	at cost x 1.15
Postage	N/C
Shipping/Delivery	at cost x 1.10
Meals and Lodging	at cost x 1.10
Geotechnical	at cost x 1.20
Concrete Cylinders (foundation)	at cost x 1.15
Surveying	at cost x 1.20

Standard Hourly Rates Schedule

Principal Owner	\$250.00/hour
Associate	\$235.00/hour
Project Manager	\$200.00/hour
Professional VI	\$180.00/hour
Professional V	\$165.00/hour
Professional IV	\$155.00/hour
Professional III	\$115.00/hour
Professional II	\$120.00/hour
CAD Manager	\$130.00/hour
CAD Designer/GIS	\$130.00/hour
Technician II	\$110.00/hour
Technician I	\$90.00/hour
Support Staff	\$85.00/hour

Consultant Name:	Fee:
Ellis Surveying - Topo	\$12,000.00
Tree Arborist	\$3,000.00

Hourly Rate Sheet and Charges

Hourly rate charges for the various classifications of professional personnel noted above shall apply only for Authorized Additional Services. An example of additional services is Clarification and Responses to regulatory agencies, (TCEQ or EPA) during a review process associated with the specific project defined in the Scope of Service of the Agreement. Additional directives from the Owner for professional services outside the stated Scope of Services. These hourly charges shall only be implemented after review with the Owner and approved by the Owner.

III. CONSULTANTS

Ellis Surveying
Tree Arborist

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.

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.

**ENGINEERS
DESIGNATED REPRESENTATIVE**

Rich Oller
Name

Project Manager
Title

2811 Loop 289 Ste 17 Lubbock, TX 79423
Address

Rich.oller @ oei-eng.com
E-mail Address

806.993.6226 (w) 806.473.8183 (m)
Phone

806.577.4722
Fax

**OWNERS
DESIGNATED REPRESENTATIVE**

Drew Huffman
Name

Director of Public Works
Title

501 James St. Tomball, TX 77375
Address

dhuffman@tomballtx.gov
E-mail Address

281.290.1466 (w)
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:

OEI, Inc.

Rich Oller 3/13/23
Signature *Date*

Rich Oller
Name

President | CEO
Title

OWNER:

CITY OF TOMBALL

Signature *Date*

Drew Huffman
Name

Director of Public Works
Title

Exhibit “A”
Scope of Professionals Services
For
Rudolph Road Water Line Extension
Tomball, Texas
March 10, 2023

Project Intent

Design plans and specifications defining the placement of a 12-inch water line along Rudolph Road, parallel to the existing sanitary sewer line. Design considerations shall be implemented to comply with TCEQ requirement for laying near an existing sanitary sewer line.

Project Goals & Objectives:

- Prepare a detailed plan set showing the placement & alignment of the proposed water line relative to Rudolph Road;
- Prepare specifications defining the type of materials to be used in constructing the proposed water line and the required compliance of the materials to meet regulatory standards;
- Placement & alignment of the proposed water line shall be placed to avoid encroaching on the separation distance of 9 feet horizontal measurement from an existing sanitary sewer line;

Risk Factors & Conflicts:

- Placement of the water line within the Right-of-Way or dedicated easement must not encroach within 9 feet of the existing sanitary sewer, or use C900 DR 18 200 psi pipe in areas where the 9 feet of separation is not possible.;
- Numerous trees are within the alignment that will need to be navigated around and precautions taken to not kill the tree from excavation/trenching;
- The drainage ditch/creek located approximately 1180 feet from the starting point of the new sanitary sewer will require special design considerations; (GLS Plans, sheet C2.2)
- Driveway crossings & gas line conflicts;

Specifications Sections Required:

- Standard Admin sections, Instruction to Bidders, Advertisement, Bid Bond, Proposal (Bid Form), Notice of Award & to Proceed, Agreement, Contractor Qualifications, etc.
- Technical Section
- Summary of Work, Site Clearing, Measurement & Payment, Schedule of Values, Coordination Mtgs, Construction Photos, Construction schedule, Submittal procedures, Shop drawings, TPDES Requirements, Reference standards, Contractor quality Control, Inspection services, Mobilization, Traffic Control, Tree & Plant Protection, Pollution control for Construction, Managing overland flow, Sediment control, Waste material disposal, Control of ground water & surface, Basic product requirements, product substitution, Excavation in public ROW, Cutting & patching, field surveying, Procedure for new water line disinfection, Restoration of site improvements, closeout procedures, project record documents, PVC materials, ductile iron fittings and Mega-Lugs, water line trenching, placement, bedding and backfill, Trace wire placement, gate valves and valve boxes and other miscellaneous requirements specific to the site.

Plans Set Development:

- Prepare plan set of water line placement within the existing right-of-way parallel to the existing sanitary sewer line.
- Bore & case under Rudolph to make tie-in.
- Prepare details of valves, fittings, and connections to illustrate the required placement and blocking.
- Prepare alignment details for creek crossings and special installation requirements.
- Prepare submittal for TCEQ design review and approval.
- Prepare calculations of pressure and velocities in the proposed extension for TCEQ review.
- Locate fire hydrants using a 300-foot radius coverage area.
- Prepare driveway crossing details & roadway repair details.
- Prepare tree preservation specifications for all trees within the alignment.
- Detail the two tie-in locations for the proposed extension.

Bidding and Advertisement:

- OEI shall post the project on CivCast after obtaining bidding dates and times from the City.
- OEI shall review all submitted bids and check the accuracy of the proposal and advise the City of the apparent low bidder.
- OEI shall do the research and verify the bidders are viable entities and have performed similar work with satisfactory results for other cities.
- OEI shall prepare a final bid tabulation and provide to the City.
- Upon approval by the City, OEI shall provide a Notice of Award to the successful contractor.
- OEI shall coordinate with the City to determine a reasonable Notice to Proceed and so issue to the Contractor.

Construction Management:

- OEI shall review submittals and approve/disapprove.
- OEI shall review all Pay Requests and approve for City payment based on Contractor Pay Requests.
- OEI shall do periodic inspections at key points of construction to assure compliance with Plans & Specifications.
- OEI shall prepare closeout documents and As-Builts of water line.
- OEI shall issue Notice of Substantial completion and Final Pay Requestion.