

RESOLUTION 2020 - 48
RESOLUTION EXPRESSING
OFFICIAL INTENT TO REIMBURSE COSTS OF THE
WATER TREATMENT PLANT REPAIR PROJECT

WHEREAS, the City of Commerce, Texas (the "Issuer") is a duly created governmental body of the State of Texas;

WHEREAS, the Issuer expects to pay, or have paid on its behalf, expenditures in connection with the design, planning, acquisition and construction of a project to include improvements to the Issuer's Water & Sewer Infrastructure, to include the Water Treatment Plant (collectively, the "Project") prior to the issuance of tax-exempt obligations, tax-credit obligations and/or obligations for which a prior expression of intent to finance or refinance is required by Federal or state law (collectively and individually, the "Obligations") to finance the Project;

WHEREAS, the Issuer finds, considers, and declares that the reimbursement for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the Issuer and, as such, chooses to declare its intention to reimburse itself for such payments at such time as it issues Obligations to finance the Project;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE ISSUER THAT:

Section 1. The Issuer reasonably expects to incur debt, as one or more series of Obligations, with an expected aggregate maximum principal amount equal to \$1,570,000 for the purpose of paying the costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No Obligations will be issued by the Issuer in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no Obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

Section 4. The foregoing Sections 2 and 3 notwithstanding, all costs to be reimbursed with qualified tax credit obligations shall not be paid prior to the date hereof and no tax credit obligations shall be issued after 18 months of the date the original expenditure is made.

Date: **December 15, 2020**



Mayor

Exhibit "A"

Project Description – per Hayter Engineering, Inc. letter dated July 15, 2019



December 11, 2020

Mr. Howdy Lisenbee, City Manager
City of Commerce
1119 Alamo
Commerce, Texas 75428

Re: Exhibit C Scope of Services – Commerce Water Treatment Plant Urgent Need Rehabilitation

Mr. Lisenbee –

Week before last, we discussed the urgency of some significant facilities repairs / replacements needed at the water treatment plant of the City of Commerce. I recently forwarded a construction cost projection (attached) to you that Hayter Engineering prepared in July of 2019. The twelve items in the letter were based upon the “wish list” of former Director of Utilities Craig Vaughn. The deficiencies regarding each of the 13 items are also listed in this letter. These items totaled \$1.06M (with a 15% contingency).

Therefore, this letter is a follow-up on your recent request for a proposal for the engineering services necessary to design a project that addresses all the items on the list. Thank you for selecting Hayter Engineering based upon our ability and experience, as is required by the Texas Engineering Practice Act.

It is our understanding that you will budget \$1.2M towards construction of the project. You have requested a proposal for engineering design, bid phase services, construction review, and record drawings.

The design will include the following components from the aforementioned letter to Mr. Vaughn:

1. Rehabilitate the six existing filter cells. This task will involve removing the existing media and underdrain, lining the walls to stop the leaks, install new underdrains and filter media.
2. Replace all of the butterfly valves on the filter piping gallery (effluent, influent, backwash, and air scour).
3. Install new actuators for the new valves on the filter gallery piping.
4. Repair the existing filter control panel.
5. Replace the plug valve on the clarifier drain line.
6. Replace the butterfly valves on the blow-off line of Clarifier #1.
7. Install a new blower for the air scour system.
8. Install a new compressor for the pneumatic valve actuators.
9. Install new scales for the chlorine ton cylinders.
10. Replace the 14” butterfly valve in the raw water flow control vault.
11. Install a strap-on flow meter in Raw Water vault #1.

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12. Install a new geared manual handwheel actuator on the existing valve in Raw Water Vault #2.
13. Install orifice plates in each of the filter cell discharge pipes to limit the filter loading rate to less than the maximum allowed by TCEQ.

The services that we propose for the design portion of this project include the following:

- Pre-design conference with you and your staff (TJ Jones and Anita Moore) to discuss the scope and associated details of the 13 work items. This will include a conference at city hall and a site visit to the plant.
- Design the appurtenances described in items 1 through 13 above. Prepare the drawings and the technical specs associated with each. This task includes both the civil engineering and the electrical engineering required for a complete design.
- Two site visits minimum during the design process to verify dimensions, discuss options and preferences with your staff, etc.
- Provide a 30% design review with you and your staff. A conference will be held at city hall for this meeting.
- The comments associated with the 30% design review will be incorporated into the design.
- A 90% design set of drawings and technical specifications will be provided to you and your staff for final review. Another conference will be held at city hall for this meeting.
- A final design (100%) opinion of probable construction cost (OPCC) will be provided for you to formulate possible funding options.
- A meeting with the city council (either in person or via Zoom) to discuss the project and the plans for moving forward.

Note: Services requested in addition to those listed above will be invoiced at our per diem rates as shown on the attached Exhibit A.

Other services included in this proposal as described as follows:

- Bid phase services – We will post the job on CivCast (a contractor clearinghouse web site) to make contractors aware of the opportunity to submit a bid. We will send a copy of the advertisement for bids to selected contractors that we have worked with in the past. Digital or hard copies of plans and contract documents will be supplied. Contractor and supplier questions will be answered during this bidding process. A bid opening will be conducted at city hall. The low bid will be checked for mathematical accuracy and the bid bond will be checked for conformance with the contract documents. The low bidder's references will be checked, and a Recommendation for Award letter will be prepared for submission to you and the City Council. We will attend the council meeting to recommend award of the job and to address questions that the council may ask. A Notice to Award will be prepared for the council to use to award the project. Contract execution will be reviewed.
- Construction review services – This phase of the project will involve contract execution, conducting a preconstruction conference, issue a Notice to Proceed, reviewing materials and equipment submittals and shop drawings, processing monthly pay requests, monthly

site visits (one per month), answering contractor's requests for information (RFIs), one change order with an associated city council meeting, a prefinal inspection, a final inspection, processing final paperwork, and a city council meeting to approve the project and the final payment. This phase of the project will include "start-up" and "commissioning" services (putting the various components through their paces, verifying proper calibration, begin the start of the warranty period, etc.).

- Warranty review services – It is assumed that there will be at least one site visit to address minor warranty issues during the one-year warranty period. One 4-hour visit and the associated minor office paperwork is included. Additionally, one follow-up visit is included to check to see if satisfactory compliance with the warranty requirements has been achieved by the contractor.
- Record drawings – The record drawings ("as-builts") will be prepared to modify the contract documents to reflect the actual quantities constructed and /or any deviations from the original design. Hard copies and electronic copies will be provided.

Our proposal for the service tasks outlined above is as follows:

• Design (lump sum)	\$97,170
• Bid and Award (time and expense)	\$7,157
• Construction Review (time and expense)	\$69,765
• Warranty Review (time and expense)	\$2,394
• Record Drawings (time and expense)	<u>\$1,162</u>
TOTAL	\$177,648

If this arrangement is acceptable, please sign the attached contract and return it to us as our notice to proceed. We can begin work within two weeks of receipt of your signed agreement for professional services.

The proposed timeline for this project is as follows:

<u>Milestone Description</u>	<u>Duration</u>	<u>Time</u>
• Receive signed Notice to Proceed for engineering services		Day 0
• Begin design with a pre-design conference	2 weeks	Day 14
• 30% design review with City staff	4 months	Day 134
• Review the 90% set of drawings and specifications	6 months	Day 314
• Submit to TCEQ for review and approval	2 weeks	Day 328
• Receive approval from TCEQ	3 months	Day 418
• Receive permission to advertise	2 weeks	Day 432
• Begin advertising for bids	2 weeks	Day 446
• Open bids	1 month	Day 476
• Review bid documentation and references	3 weeks	Day 497
• Recommend award and issue Notice of Award	2 weeks	Day 511
• Execute contracts, issue Notice to Proceed	6 weeks	Day 553

• Begin construction	1 week	Day 580
• Attain substantial completion status	9 months	Day 830
• Final inspection	2 weeks	Day 844
• Execute final paperwork	2 weeks	Day 858

As you can see, the process from start to finish will take over 2 years – with some of the items being beyond the control of Hayter Engineering or the City of Commerce. Where it is within our power to do so, we will make every effort possible to minimize the time it takes us to complete our portion of the process.

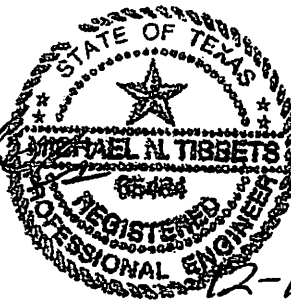
Thank you for this opportunity to be of service. Please let me know if you have any questions.

Sincerely,

HAYTER ENGINEERING

Michael N. Tibbets

Michael N. Tibbets, P.E.
Vice President



TBPE #F-315

12-11-2020

attachments: July 15, 2020 letter to Craig Vaughn, former Director of Utilities
Agreement for Professional Services



HAYTER
ENGINEERING, INC
Planners Surveyors Engineers

July 15, 2019

HEI # 950110-10.02

Mr. Craig Vaughn, Director of Utilities
City of Commerce
1119 Alamo Street
Commerce, Texas 75428

Re: Water Treatment Plant Renovations

Mr. Vaughn –

This letter is a follow-up on our conversations and meetings regarding the condition of the Commerce water treatment plant filters in particular, and the condition of the rest of the plant in general. An overview of our discussions is as follows:

1. Filter leaks – as stated in previous correspondence, attempts to address the leaks in cells 3 and 6 resulted in other leaks springing up in places where they were not originally. Plant Superintendent Anita Tutt now reports that at least 5 of the 6 filter cells are now leaking.
2. Filter valves – many of the valves on the pipes of the filter cells (air scour, backwash, influent, and effluent) do not seal off completely.
3. Filter valve actuators – pneumatic actuators that were installed on the aforementioned valves have also failed. This failure now requires the plant operators to open and close the valves manually with pipe wrenches and locking pliers.
4. Filter control panel – the control panel on the platform at the top of the filter does not allow for automatic operation of the valves. The operators therefore do not have the ability to remotely open and close valves, nor do they have the ability to monitor the status of each filter cell.
5. Clarifier drain plug valve – the plug valve that was installed in 1996 to allow the clarifiers to drain no longer has a functioning actuator. The failed unit was removed; forcing the plant operators to manually open and close the valve with a pipe wrench. The valve should be replaced with a new valve that is equipped with a geared manual handwheel actuator.
6. Clarifier #1 sludge blow-off valves – none of these three valves function automatically anymore. They should be replaced with new valves with manual locking levers.
7. Compressor, blower, and air dryer – the air dryer has failed, which likely contributed to the failure of the pneumatic valve actuators listed above (moisture in the compressed air

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probably led to degradation of the interior of the valve actuators). The blower and compressor still work; but were installed in 1996 and may need replacement before a failure occurs.

8. Chlorine ton cylinders – There are no scales to weigh the cylinders – as required by TCEQ. Presently the operators must wait until one unit is completely empty before they know to order a replacement container.
9. Raw water vault #1 flow control valve – the sump pump in this vault failed, allowing water to rise in the vault and submerge the electrical components and the pneumatic valve actuator. The existing failed pneumatic actuator and valve need to be replaced with a new butterfly valve and a manual geared handwheel operator.
10. Raw water vault #1 flow meter – the flow meter electronics were ruined when the vault flooded. A new meter should be installed.
11. Raw water vault #2 valve actuator – the actuator in this vault has failed and should therefore be replaced.
12. Filter loading rate – current TCEQ regulations require that there be some means available to limit the loading of any filter cell to no more than 5 gallons per minute per square foot. These rules were not in place when the plant was constructed in the 1970's; and none of the inspections have noted this issue. However, it is just a matter of time before a TCEQ inspector catches this deficiency. There is not enough room to install a flow-limiting device on the filter effluent, so we must limit the amount of flow coming into the cells.

The Texas Commission on Environmental Quality is requiring that the leaks on the filters be repaired by April of next year. However, simply repairing the leaks does not address items 2 through 12 as listed above. It is my understanding that you have asked for a tentative opinion of probable construction cost (OPCC) to address all these issues:

ISSUE	DESCRIPTION	OPCC	COMMENTS
Filter leaks	Line all six filter cells with new steel panels, install new filter underdrains and new filter media	\$555K	Based upon Don Fryer's quote from replacing two cells in this manner for \$185K.
Filter valves	7-4" butterfly valves 19-8" butterfly valves	\$15,640	Cost figures from Municipal Valve and Equipment + 60% overhead, profit, and installation (OP&I)

Filter valve actuators	7-4" non-modulating 12-8" non-modulating 7-8" modulating	\$77,600	Cost figures from Municipal Valve and Equipment + 60% overhead, profit, and installation (OP&I)
Filter control panel and associated wiring	Repair the filter control panel, reconnect pneumatic valve actuators, remote control of backwash pumps, remote control for blower, and reconnect turbidity meters.	\$195,923	\$150,710 per Electrical Expertise letter of July 9, 2019, plus 30% overhead and profit for the general contractor
Clarifier drain plug valve	8" plug valve with manual geared operator	\$5,400	Cost figures from Municipal Valve and Equipment + 60% overhead, profit, and installation (OP&I)
Clarifier #1 blow-off valves	3-4" butterfly valves with locking lever	\$2,080	Cost figures from Municipal Valve and Equipment + 60% overhead, profit, and installation (P, O, & I)
Blower for air scour system	20 HP blower for air scour system for 415 CFM @ 4.6 PSI delivered to filter underdrains.	\$14,995	Based on Republic Manufacturing quote of \$9,371.57 on 07-02-2019 plus 60% P, O, & I
Compressor to run pneumatic actuators. Includes air dryer to protect the pneumatic valve actuators.	The existing compressor is still working, but it is over 24 years old and should be replaced. The air dryer removes moisture from the air that could damage the pneumatic valve actuators.	\$16,680	Per Advanced Air Technologies quote of July 11, 2019 plus 60% P, O, & I and \$2K for freight and start-up services.
Chlorine ton cylinder scales	Use for three units (one in service and two as stand-by)	\$13,015	MaCauley Controls quote of 06-24-2019 + 60% P, O, & I
Raw water vault #1 flow control valve	14" flanged butterfly valve with manual geared operator	\$3,200	Cost figures from Municipal Valve and Equipment + 60% overhead, profit, and installation (OP&I)
Raw water vault #1 flow meter	Strap-on ultrasonic meter with display	\$10,056	Frank Clark & Associates \$6,285 + 60% P, O, & I

Raw water vault #2 valve actuator	Install manual geared handwheel actuator on existing valve.	\$1,920	Cost figures from Municipal Valve and Equipment + 60% overhead, profit, and installation (OP&I)
Filter loading rate	Install orifice plates in each of the discharge pipes on the influent side of each filter cell.	\$6,000	No moving parts required to limit the flow to no more than 5 GPM / SF per TCEQ regulations.
	SUB-TOTAL	\$917,509	
	CONTINGENCY	\$137,626	15% of sub-total
	TOTAL	\$1,055,135	Round up to \$1.06M

Of course, the work at the water plant started out as a far smaller project (address two of the six filter cells that were leaking). And it is obvious that the plant can continue to work (for a while) without addressing all the features listed in the OPCC above. However, sooner or later critical components will fail, or cease to function properly, to the point that treatment is impaired or is stopped altogether.

As such, there are components in the OPCC above that can be removed to reduce the overall cost of the job. However, adding these components at a later date may be more expensive and may reduce the overall capacity of the plant's ability to treat water to TCEQ standards.

Please review this letter and let me know how you wish to proceed. I will be glad to meet with you and other City staff as necessary.

Thank you for this opportunity to be of service.

Sincerely,

HAYTER ENGINEERING

Michael N. Tibbets



TBPE #F-315

Michael N. Tibbets, P.E., Vice President

cc: Ms. Anita Tutt, Water Treatment Plant Superintendent, City of Commerce

MNT: mnt

AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT is entered into by the City of Commerce, Texas, a municipal corporation, acting herein through its City Manager, duly authorized to act by the City Council, hereinafter called "OWNER," and HAYTER ENGINEERING, INC., a Texas corporation, acting herein through a duly authorized officer, herein called "ENGINEER," because OWNER desires ENGINEER'S services in connection with engineering services for a 2021-2022 Water Treatment Plant Urgent Need Rehabilitation project.

WITNESSETH:

For the mutual promises and benefits herein described, the parties agree as follows:

1. Term of AGREEMENT: This AGREEMENT shall become effective on the day it is executed and shall continue in effect thereafter until the services provided for herein have been performed, or until terminated as provided herein.
2. Services to be Performed by ENGINEER: Professional services are detailed in Exhibit B – Professional Services and Exhibit C – Scope of Services hereto.

OWNER may request additional services of any type normally rendered by ENGINEER. These will be called "additional services," and compensation shall be determined as per Section 3(b) hereof.

Professional services during the construction period, if any such services are included in this AGREEMENT, are understood to be for the time of completion initially specified in the corresponding construction contract, and services beyond that time, including services as expert witness or assisting in litigation, or services due to failure of the CONTRACTOR to complete on time, will be deemed additional services.

Professional services provided are limited to those set forth in this agreement. The ENGINEER shall have no other obligations or responsibilities beyond those listed herein.

3. Compensation of ENGINEER: Owner shall pay ENGINEER as follows:

(a) Professional Services:

• Design (lump sum)	\$97,170
• Bid and Award (time and expense)	\$7,157
• Construction Review (time and expense)	\$69,765
• Warranty Review (time and expense)	\$2,394
• Record Drawings (time and expense)	\$1,162

- (b) OWNER shall pay ENGINEER for additional services as outlined in Exhibit B and as authorized in writing by OWNER at the per diem rates in Exhibit A hereto, plus reimbursable expenses.

- (c) ENGINEER may submit monthly statements for professional and additional services. These will be based upon ENGINEER'S estimate of services completed at the time, and OWNER shall make prompt payments. If OWNER fails to pay ENGINEER within sixty (60) calendar days of the receipt of ENGINEER'S statement, the amounts due ENGINEER shall increase at the rate of one percent (1%) a month. ENGINEER may, after giving seven (7) days written notice to OWNER, suspend services until paid.
- (d) In the event of termination by OWNER, ENGINEER shall be entitled to payment for services rendered through receipt of termination notice. ENGINEER will also be entitled to payment for all reasonable termination expenses.
- (e) "Termination expenses" means reimbursable expenses, salaries, and overhead costs due to termination, including, but not limited to, transferring job records to OWNER, termination negotiations, and reassignment of personnel.

"Reimbursable expenses" include, but are not limited to, long distance telephone, postage, equipment, expendables, mileage, subcontractors or special consultants, freight, testing fees, copies, and blueprints. Where special consultants or subcontractors are used as additional services, the ENGINEER'S reimbursement shall include a service charge equal to 5% of the subcontractor's invoice amount.

- 4. Services to be Performed by OWNER: OWNER shall: (i) designate a specific person as OWNER's representative; (ii) provide ENGINEER with any previous studies, reports, data, final site layouts, budget constraints, special OWNER requirements, or other pertinent information known to OWNER; no charge will be made to ENGINEER for such information, and OWNER and its agencies will cooperate with ENGINEER to provide said information, in every way possible to facilitate the performance of the project; (iii) ensure access for the ENGINEER to properties necessary for performance of the ENGINEER'S work; (iv) provide legal, accounting, or insurance consultants, financial advisors or other similar specialists as required for the project; (v) make prompt payments in response to ENGINEER'S statements; and (vi) respond in a timely fashion to requests from the ENGINEER. ENGINEER is entitled to rely upon and use, without independent verification and without liability, all information and services provided by OWNER or OWNER's appointees, or with respect to buried utilities, the utility providing service in the project area.
- 5. Termination: The obligation to provide further services under this AGREEMENT may be terminated by either party upon ten (10) calendar days written notice, in the event of substantial failure by the other party to perform in accordance with the terms hereof.
- 6. Reuse of Documents: All documents prepared by ENGINEER are instruments of service for the specific project contemplated under this AGREEMENT. They are not intended for reuse on extensions of that project, or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at

OWNER's sole risk and without liability to ENGINEER.

7. Notices: Any notices to be given hereunder by either party to the other may be affected either by personal delivery, in writing, or by registered or certified mail.
8. Sole Parties and Entire AGREEMENT: This AGREEMENT shall not create any rights or benefits to anyone except the OWNER and ENGINEER and contains the entire agreement between the parties. Oral modifications to this agreement shall have no force or effect.
9. Texas Law to Apply; Successors; Construction: This AGREEMENT shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the parties hereto and their representatives, successors and assigns. Should any provisions in this AGREEMENT later be held invalid, illegal or unenforceable, they shall be deemed void, and this AGREEMENT shall be construed as if such provision had never been contained herein.
10. Other Provisions: The parties hereto further agree as follows:
 - (a) **Limitation of Liability.** In recognition of the relative risks and benefits of the project to both the OWNER and the ENGINEER, the risks have been allocated such that the OWNER agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER and his subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the ENGINEER and his or her sub-consultants to all those named shall not exceed \$100,000 or the ENGINEER'S total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to, negligence, professional errors or omissions, strict liability, and breach of contract.
 - (b) **The ENGINEER shall not be responsible for delays caused by factors beyond the ENGINEER's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the OWNER to furnish timely information or approve or disapprove of the ENGINEER's services or work product, or delays caused by faulty performance by the OWNER's or by contractors of any level. When such delays beyond the ENGINEER's reasonable control occur, the OWNER agrees that the ENGINEER shall not be responsible for damages, nor shall the ENGINEER be deemed in default of this Agreement.**
 - (c) **Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall**

commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statute of limitations commence to run any later than the date when the ENGINEER'S services are substantially completed.

- (d) Any opinion of the probable construction cost prepared by the ENGINEER represents only his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or many other factors, the ENGINEER does not imply nor guarantee the accuracy of such opinions. If the OWNER elects to redesign or rebid the project to reduce costs, ENGINEER'S services for such rebidding or redesign shall be additional services.
- (e) The ENGINEER has not been retained or compensated to provide design and construction review services relating to any construction contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the contractor to perform his work, but not relating to the final or completed structure. The ENGINEER does not in any manner guarantee the performance of the construction contractors.
- (f) ENGINEER will strive to perform services hereunder in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document, or otherwise.
- (g) ENGINEER is not responsible for any damages, including those to third parties, resulting from modifications made to the ENGINEER'S design or technical specifications by a construction manager, value engineer, or other party to the project selected or approved by the OWNER.
- (h) When the ENGINEER is providing an assessment or survey of property being considered for purchase by the OWNER, the OWNER shall secure an agreement from the property owner to protect the OWNER and ENGINEER in the event said assessment or survey finds a condition that could potentially reduce the value of the property.
- (i) Consequential damages. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ENGINEER, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of

income, loss or reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

- (j) Reference communications. The ENGINEER may be required to render opinions about the performance or qualifications of others engaged or being considered for engagement by the OWNER. Those about whom opinions are rendered may, consequently, initiate claims against the ENGINEER. To help create an atmosphere in which the ENGINEER may freely report or express such opinions candidly in the interest of the OWNER, the OWNER agrees to indemnify and hold harmless the ENGINEER against all damages, liabilities or costs, including reasonable attorneys' fees arising from the rendering of such confidential opinions and reports by the ENGINEER to the OWNER.
- (k) Delivery of Electronic Files – In accepting and utilizing any drawings, reports and data on any form of electronic media from the ENGINEER, Owner agrees that such files are instruments of service of the ENGINEER, solely for this Project. The Owner agrees not to reuse these electronic files for any purpose other than of the Project. The Owner agrees to waive all claims against the ENGINEER resulting from any unauthorized changes to or reuse of the electronic files for any other project.

Electronic files furnished by either party shall be subject to an acceptance period of sixty (60) days. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

In the event of a conflict between the hard-copy construction documents and record drawings prepared by the ENGINEER and the electronic files, the signed and sealed hard-copy construction documents shall govern.

In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the ENGINEER or from any reuse of the electronic files.

- (l) Mediation – In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the OWNER and the ENGINEER agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation.

If OWNER requests in writing that ENGINEER provide any specific construction phase services, and if ENGINEER agrees in writing to provide such services, ENGINEER shall be compensated for said service in accordance with Section 3 (b) herein.

- IN WITNESS WHEREOF, the parties, having read and understood this AGREEMENT, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the 11th day of December 2020.

By: Michael J. Donnan By: _____
Michael J. Donnan, President Howdy Lisenbee, City Manager

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EXHIBIT A
Schedule of Per Diem Rates
January 1, 2021

Personnel	Hourly Rates
Principal	185.00
Project Manager	155.00
Project Engineer	135.00
Design Engineer II	125.00
Design Engineer I	110.00
Senior CAD/Survey Technician	95.00
CAD Technician II	70.00
CAD Technician I	60.00
Senior Administrative Assistant	85.00
Administrative Assistant	70.00
On-Site Observer	85.00
Surveyor	145.00
Survey Technician II	65.00
Survey Technician I	50.00
Survey Crew - 2 Man Party	115.00
Survey Crew - 3 Man Party	175.00
Survey Crew – 1 Man GPS	105.00

The schedule of per diem rates may be changed by the ENGINEER at his sole discretion. Time billed for per diem rate services shall be in minimum increments of ¼ hour.

EXHIBIT B

PROFESSIONAL SERVICES

2.1 BASIC PROFESSIONAL SERVICES

2.1.1 General

ENGINEER shall provide for OWNER professional engineering and surveying services as hereinafter provided and as described in Exhibit C – Scope of Services. These services will include providing professional engineering consultation and advice and furnishing customary civil and electrical engineering services.

2.2 Design Phase, Drawings and Specification Phase

2.2.1 Prepare drawings to show the general scope, extent and character of the work of CONTRACTOR ("Drawings"), and Technical Specifications.

2.2.2 Provide technical data for OWNER'S use in obtaining approval of governmental authorities having jurisdiction to approve the design of the Project and assist OWNER in consultations with said approval authority.

2.2.3 Advise OWNER of any adjustments to the latest opinion of probable construction costs.

2.2.4 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions, and supplementary conditions, and bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

2.2.5 Furnish one copy of the above documents and of the Drawings and Specifications and present and review them with OWNER. Additional copies as required will be furnished by the ENGINEER to the Texas Commission on Environmental Quality (TCEQ) and funding agencies as required for review and approval.

2.3 Bidding

2.3.1 Assist OWNER in advertising for bids once for a single prime contract for the Work.

2.3.2 Prepare addenda as appropriate to interpret, clarify or expand the Bidding Documents.

2.3.3 ENGINEER will print and distribute all sets of drawings and addendums required; maintain a list of prospective bidders; distribute any addenda required; provide drawings and specifications to contractor plan rooms; and attend a pre-bid conference if one is deemed advisable.

2.3.4 Attend the bid opening, prepare bid tabulation sheets, and recommend an award if

deemed appropriate.

- 2.3.5 ENGINEER will prepare the necessary sets of documents for contract execution; work with CONTRACTOR and OWNER to execute same; submit executed documents for approval to City Attorney and any funding agencies requiring document review; and distribute executed documents.

2.4 Construction Phase

- 2.4.1 ENGINEER shall consult, advise, and act as OWNER'S representative as provided in the construction contract. All of OWNER'S instructions to CONTRACTOR will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said construction contract.

- 2.4.2 In connection with observations of the work of CONTRACTOR while it is in progress:

- 2.4.2.a ENGINEER shall make visits to the site at intervals ENGINEER deems necessary, in order to observe the progress and quality of the CONTRACTOR'S work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general, if such work is proceeding in accordance with the contract documents.

- 2.4.2.b If requested by OWNER or recommended by ENGINEER and agreed to in writing by OWNER, an on-site observer will be furnished, to act as directed by ENGINEER in order to assist ENGINEER in observing performance of the work. Such services will be paid for as per Section 3b. The duties and responsibilities and the limitations on the authority of the on-site observer will be set forth in a separate exhibit which is to be made a part of this Agreement before such services begin.

- 2.4.2.c ENGINEER'S visits to, and representation by the on-site observer at the site, will enable ENGINEER to better carry out the duties and responsibilities assigned to ENGINEER during the Construction Phase, and, by exercise of ENGINEER'S efforts as an experienced and qualified design professional, provide OWNER a greater degree of confidence that the completed work of CONTRACTOR will conform generally to the contract documents. ENGINEER shall not, however, during such visits or as a result of such observations, supervise, direct or have control over CONTRACTOR'S work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by CONTRACTOR or for safety precautions and programs incident to the work, or for any failure of CONTRACTOR to comply with laws, regulations, codes or orders applicable to CONTRACTOR'S work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by CONTRACTOR, nor assume responsibility for CONTRACTOR'S failure to furnish and perform their work in accordance with the contract documents.

2.4.3 Interpretations and Clarifications

ENGINEER shall issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare work directive changes and change orders, as required.

2.4.4 Shop Drawings & Substitutes

The ENGINEER shall review and approve or take other appropriate action on the CONTRACTOR submittals, such as shop drawings, product data, samples, and other data, which the CONTRACTOR is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the CONTRACTOR. The ENGINEER'S review shall be conducted with reasonable promptness while allowing sufficient time in the ENGINEER'S judgment to permit adequate review. Review of a specific item shall not indicate that the ENGINEER has reviewed the entire assembly of which the item is a component. The ENGINEER shall not be responsible for any deviations from the Construction Documents not brought to the attention of the ENGINEER in writing by the CONTRACTOR. The ENGINEER shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

2.4.5 Inspections and Tests

ENGINEER shall have authority, as OWNER'S representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing and approvals required by laws, regulations, codes, orders or the contract documents, to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the contract documents.

2.4.6 Disputes between OWNER and CONTRACTOR

ENGINEER shall act as initial interpreter of the contract documents and judge of the acceptability of the work and make decisions on all claims of OWNER and CONTRACTOR relating to the acceptability of the work or the interpretation of the requirements of the contract documents. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

2.4.7 Applications for Payment

Based on ENGINEER'S observations as an experienced and qualified design professional, on information provided by the on-site observer and on review of applications for payment and the accompanying data and schedules; ENGINEER shall

determine the amount owed to CONTRACTOR and recommend in writing payments to CONTRACTOR. This recommendation will constitute a representation to OWNER that the work has progressed to the point indicated, and that, to the best of ENGINEER'S knowledge, information and belief, the quality of such work is generally in accordance with the contract documents. However, ENGINEER will not thereby be deemed to have made exhaustive, continuous or detailed reviews or examinations to check the quality or quantity of CONTRACTOR'S work as it is furnished, beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the contract documents. ENGINEER'S review of CONTRACTOR'S work for the purpose of recommending payments will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the monies paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

2.4.8 Inspections

ENGINEER shall conduct an inspection to determine if the work is substantially complete, and a final inspection to determine if the completed work is acceptable, so that ENGINEER may recommend final payment to CONTRACTOR. Any such recommendation is subject to the limitations expressed earlier herein.

2.4.9 Limitation of Responsibilities

ENGINEER shall not be responsible for the acts or omissions of any CONTRACTOR, or its subcontractor, supplier, or any of the CONTRACTOR'S or subcontractor's suppliers, agents or employees, or any other persons (except ENGINEER'S own employees and agents) at the site or otherwise furnishing or performing any of the CONTRACTOR'S work; however, nothing contained in this section shall release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the contract documents.

2.5 ADDITIONAL PROFESSIONAL SERVICES

2.5.1 Record Drawings - ENGINEER will compile for client a set of record drawings, showing data furnished to the ENGINEER by CONTRACTOR or OWNER, and provide two sets of prints and a PDF. This is a Time & Expense item with an estimated cost of \$1,162.00.

2.5.2 Warranty Review – ENGINEER will assist OWNER in notifying the CONTRACTOR of contractual deficiencies regarding workmanship, material and equipment that become apparent during the warranty period. This includes conducting a warranty inspection at the end of the warranty period, preparing a deficiency punch list, and verifying completion of punch list items. This is a Time & Expense item with an estimated cost of \$2,394.00.