

CONTRACT FOR PROFESSIONAL SERVICES - ENGINEER

THIS AGREEMENT, entered into as of the date fully executed by and between the City of Ennis, Texas, a duly incorporated home-rule city pursuant to Chapter 9 of the Tex. Loc. Gov't. Code, and its municipal charter (hereinafter called the "CITY") acting herein by its Mayor, duly authorized by resolution of the City Council of the City of Ennis and [INSERT ENGINEERING FIRM], [INSERT ADDRESS], [INSERT CITY, STATE, ZIP] (hereinafter called the "ENGINEER"), a domestic corporation, registered to do business in Texas. The CITY and ENGINEER may hereinafter sometimes be referred to as a "Party" or collectively as the "Parties."

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the ENGINEER to (1) render certain technical and professional services hereafter described in "Scope of Services" or (2) perform certain work hereafter described in "Scope of Services" for the project briefly described as [INSERT PROJECT NAME]: NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. EMPLOYMENT OF ENGINEER

The CITY hereby agrees to engage the ENGINEER, and the ENGINEER hereby agrees to perform the "Scope of Services" hereinafter set forth. This contract shall be performed in Ellis County, Texas.

II. SCOPE OF SERVICES

Engineering services in connection with preparation of plans and specifications and construction phase services including, but not limited to, all necessary design, surveying, plans, and specifications for [INSERT PROJECT NAME]

The ENGINEER shall also prepare detailed cost estimates of authorized construction, and shall use reasonable skill and care befitting the profession in preparing cost estimates that shall reflect current, local construction costs or current wage rate.

The services rendered by ENGINEER for the Project to be designed for construction are divided into three (3) distinct and sequential phases as follows:

Preliminary Phase – Preliminary studies, layouts, and cost estimates

Design Phase – Preparation of plans, specifications and contract documents

Construction Phase – CITY'S representative during construction

The work is further described in detail on Attachment A - [INSERT ENGINEER NAME] proposal dated [INSERT PROPOSAL DATE] and shall include a proposed schedule for design of the project.

The ENGINEER shall review submittals, substitutions, pay requests and/or change order requests and make recommendations to the CITY. The ENGINEER has no authority to approve any changes to the Construction Documents, Design, Materials, Contract Amount, or Contract Time nor make any other decisions on behalf of the CITY, only the CITY has this authority, and the ENGINEER'S responsibilities are in an advisory capacity only.

Certain elements of the engineering work shall be performed as Basic Services; others shall be performed as Additional Services. Those elements of the engineering work which cannot be accurately pre-determined or controlled entirely by the ENGINEER shall be performed as Additional Services.

A. BASIC SERVICES

1. PRELIMINARY PHASE

- a.** Provide Project Management services to direct, supervise and coordinate the various items of work within the Project Design, including review of activities of subcontracted engineers.
- b.** If held, attend preliminary conference with the CITY and other interested parties regarding the project in order to further define the work.
- c.** Establish the scope of any soil and foundation investigations or any special surveys and tests which, in the opinion of the ENGINEER, may be required, and arrange for such work to be done, for the CITY'S account.
- d.** Prepare a preliminary engineering report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the CITY, including preliminary layouts, and cost estimates, and setting forth clearly the ENGINEER'S recommendations.

2. DESIGN PHASE

- a.** Provide Project Management service to direct, supervise and coordinate the various items of work within the project,

including review of the activities of subcontracted engineers.

- b.** Establish the scope of any additional soil and foundation investigations or any special surveys and tests which, in the opinion of the ENGINEER may be required for design, and arrange for such work to be done, for the CITY'S account.
- c.** Furnish to the CITY, where required by the circumstances of the assignment, the engineering data necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid, or for planning advances).
- d.** Perform field surveys to collect information which in the opinion of the ENGINEER is required for design.
- e.** Prepare detailed specifications, contract drawings, and bidding documents to be included in contract documents for construction authorized by the CITY.
- f.** Prepare detailed cost estimates of authorized construction. The ENGINEER shall use reasonable skill and care befitting the profession in preparing cost estimates that will reflect current, local construction costs.
- g.** Furnish the CITY all necessary copies of approved Contract Documents.

3. CONSTRUCTION PHASE

- a.** Provide Project Management services to direct, supervise and coordinate the various items of work within the Project, including review of activities of subcontracted engineers.
- b.** Assist the CITY in the advertisements of the project for bids.
- c.** Assist the CITY in the opening and tabulation of bids for construction of the Project, and consult with the CITY as the proper action to be taken, based on the engineering considerations involved.
- d.** Assist in the preparation of formal Contract Documents.
- e.** Provide routine horizontal and vertical controls for use by Contractor to do his detailed construction staking.

- f. Make regular visits to the construction site (minimum of once a month). ENGINEER shall make visits at intervals appropriate to the various stages of construction to observe and to evaluate the progress and quality of work, and to determine in general if the construction is proceeding in accordance with the Contract Documents. ENGINEER shall work closely with the Resident Project Representative (as required by CITY) to ensure that complete, accurate construction records, reports and information are being provided and that the quantities and quality of work done by the Contractor are consistent with the Contract Documents.
- g. Provide services of Resident Project Representative and other field personnel as required for on-the-site determination of the quantities and quality of the work done by the Contractor, and to provide construction records, reports and information to the ENGINEER or Project Engineer.
- h. Arrange for construction testing as required by the Project, for the CITY'S account.
- i. Consult and advise with the CITY; issue all instructions to the Contractor requested by the CITY; and prepare and issue routine change orders with CITY'S approval. On matters requiring the CITY'S involvement, the ENGINEER shall provide the CITY'S designated representative with all facts germane to such matters along with a complete recommendation for the CITY to consider. Upon the decision of the CITY, the ENGINEER shall be notified of the CITY'S decision with instructions to inform the Contractor. All matters of this nature shall be reduced to writing for the record as soon as practical.

The ENGINEER shall have other duties in this regard that may be included in the General Conditions of construction Contract Documents.

- k. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor submits. This review is for the benefit of the CITY and covers only general conformance with the information given by the Contract Documents. The Contractor shall review and stamp his approval on submittals prior to submitting to ENGINEER, and review by the ENGINEER shall not relieve the

Contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with the Contract Documents.

- I. Obtain and review monthly the final estimates for payments to Contractors, and furnish to the CITY any recommended payments to Contractors; and assemble written guarantees which are required by the Contract Documents.
- m. Conduct, in company with the CITY, a final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning Project status, as it may affect CITY'S final payment to the Contractor.

B. ADDITIONAL SERVICES

All work performed by ENGINEER at request of CITY which is not included in the Basic Services defined above, shall constitute Additional Services. Unless included in said Basic Services, Additional Services may include but are not limited to the following:

- 1. Studies, tests, and process determination to establish basis of design for water and waste treatment facilities.
- 2. Land surveys, and establishment of boundaries and monuments, and related office computation and drafting.
- 3. Preparation of property or easement descriptions.
- 4. Preparation of any special reports required for marketing of bonds.
- 5. Small design assignments (estimated construction cost less than \$100,000).
- 6. Appearances before regulatory agencies.
- 7. Assistance to the CITY as an expert witness in any litigation with third parties, arising from the development or construction of the Project, including preparation of engineering data and reports.
- 8. Special investigations involving detailed consideration of operation, maintenance and overhead expenses; preparation of rate schedules; earnings and expense statements; special feasibility studies; appraisals; evaluations; and material audits or inventories

required for certification of force account construction performed by the CITY.

9. Special soil and foundation investigations, including field and laboratory tests, borings, related engineering analyses, and recommendations.
10. Detailed mill, shop and/or laboratory inspection of materials or equipment.
11. Travel and subsistence required of the ENGINEER and authorized by the CITY to points other than CITY'S or ENGINEER'S offices and Project site.
12. Additional copies of reports over ten (10) sets and additional sets of Contract Document over twenty (20) sets.
13. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
14. Preparation of environmental statements and assistance to CITY in preparing for and attending public hearings.
15. Plotting, computing, and filing plats of subdivisions; staking of lots; and related land planning and partitioning functions.
16. Revision of contract drawings after a definite plan has been approved by the CITY, redrawing of plans to show work as actually constructed.
17. Services after issuance of Certificate of Substantial Completion.
18. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by Client.
19. Preparation of operating instructions and manuals for facilities and training of personnel and assistance in operation of facilities.
20. Additional or extended services during construction made necessary by work damaged by fire or other cause during construction, defective or neglected work of contractor; services rendered after prolongation of construction contract time by more than twenty percent (20%); acceleration of work schedule involving services beyond normal working hours; or default under construction contract due to delinquency or insolvency.

- 21.** Providing any other service not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted engineering practice.
- 22.** Any other special or miscellaneous assignments specifically authorized by CITY.
- 23.** Provide consultation for replacement of the Work resulting from fire or other causes during construction.

III. TIME OF PERFORMANCE

ENGINEER shall proceed immediately upon execution of this Contract with performance of the services called for under the Basic Services with completion within [INSERT WRITTEN AMOUNT OF DAYS] ([INSERT # DAYS]) calendar days after execution, unless delayed by causes outside the control of ENGINEER, and shall proceed with subsequent work only on authorization by CITY. ENGINEER shall immediately submit to CITY in writing evidence of delay satisfactory to the CITY'S reasonable discretion, upon which an extension of time equal to the period of actual delay, if approved by the CITY, shall be granted in writing.

IV. INFORMATION AND SERVICES TO BE FURNISHED ENGINEER

It is agreed that the CITY shall furnish, without charge, for the purpose of the Contract, information, data, reports, records, and maps as are existing and available, for the carrying out of the work of the ENGINEER as outlined under "Scope of Services"; provided, however, the CITY makes no representation or warranty regarding the reliability of any such information, data, reports or maps. The CITY its agencies shall cooperate with the ENGINEER and will, to the fullest extent reasonably practicable, facilitate the performance of the work described in this Contract.

V. COMPENSATION AND METHOD OF PAYMENT

A. COMPENSATION

It is agreed that total fees for Basic Services for the work as described in the attached Exhibit "A" (including subcontracted Engineering and other professional services) shall not exceed the sum of [INSERT WRITTEN DOLLAR] Dollars and [INSERT WRITTEN CENTS] Cents (\$ [INSERT # AMOUNT]) unless specifically authorized by the CITY in writing.

B. PAYMENT

ENGINEER shall invoice CITY monthly for its services and charges incurred by ENGINEER for services performed under the direction and control of ENGINEER as described herein.

CITY agrees to pay ENGINEER at its office the full amount of each such invoice. Invoices will be paid in accordance with the Texas Prompt Payment Act. The ENGINEER shall pay its subcontractors no later than the tenth day after he receives payment as required under Chapter 2251, Texas Local Government Code.

1. REIMBURSABLES – as stated in Attachment A of ENGINEER'S Proposal and shall not exceed the limits proposed. All reimbursables shall be accompanied with documentation to expenses incurred, and shall only be paid with the approval of the CITY.
2. SITE VISITS – as stated at rate and frequency in Attachment A and approved by the CITY.
3. ENGINEER shall not charge for corrections of errors and omissions, by the ENGINEER, to the design of the project.

VI. RECORDS

ENGINEER shall keep accurate records, including time sheets and travel vouchers, of all time and expenses allocated to performance of Contract work. Such records shall be kept in the office of the ENGINEER for a period of not less than five years (5 Yr) and shall be made available to the CITY for inspection and copying upon reasonable request.

VII. OWNERSHIP OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes and data are the property of CITY. ENGINEER may retain reproducible copies of drawings and other documents for its use.

All documents, including drawings and specifications prepared by ENGINEER

are instruments of service in respect to the project. They are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by ENGINEER for the specific purpose intended shall be at CITY'S sole risk and without liability or legal exposure to ENGINEER. Any such verification or adaption shall entitle ENGINEER to further compensation at rates to be agreed upon by CITY and ENGINEER.

VIII. INSURANCE

All insurance shall be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by CITY. The City of Ennis, its officers, agents, and employees shall be named as an additional Insured. The ENGINEER shall, at his own expense, purchase, maintain and keep in force insurance that shall protect against injury and/or damages which may arise out of or result from operations under this contract, whether the operations be by himself or by any agent, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts ENGINEER may be liable, of the following types and limits (no insurance policy or certificate of insurance required below shall contain any aggregate policy year limit unless a specific dollar amount (or specific formula for determining a specific) aggregate policy year limit is expressly provided in the specification below for the particular insurance policy).

- A. Worker's Compensation Insurance with statutory limits.
- B. Commercial General Liability occurrence type insurance (No "XCU" restrictions shall be applicable). Products/completed operations coverage must be included.
 - 1. Bodily injury: Five hundred thousand dollars (\$500,000) single limit per occurrence or five hundred thousand dollars (\$500,000) each person/ five hundred thousand dollars (\$500,000) per occurrence.
 - 2. Property Damage: One hundred thousand dollars (\$100,000) per occurrence.
 - 3. Minimum aggregate policy year limit: Two million dollars (\$2,000,000).
- C. Commercial Automobile Liability Insurance (including owned, non-owned and hired vehicles coverages).
 - 1. Minimum combined single limit of five hundred thousand dollars

- (\$500,000) per occurrence for bodily injury and property damage.
2. If individual limits are provided: Minimum limits are Three hundred thousand dollars (\$300,000) per person, Five hundred thousand dollars (\$500,000) per occurrence for bodily injury and One hundred thousand dollars (\$100,000) per occurrence for property damage.
 3. Such coverage shall include owned, hired, and non-owned vehicles of ENGINEER or ENGINEER's employees, agents, representatives or subcontractors.
- D. ENGINEER also agrees to maintain Professional Liability Insurance coverage of two million dollars (\$2,000,000) minimum per occurrence/claim/policy year aggregate limits to protect the CITY against damages arising from the ENGINEER'S negligent or wrongful act or omission in the performance of services under this Contract. Coverage shall continue for a minimum of two (2) years after the ENGINEER'S assignment under this Contract is completed. The deductible on the policy for Professional Liability shall not exceed twenty-five thousand dollars (\$75,000) unless specifically approved by the CITY.
- E. ENGINEER shall require all of its subcontractors to provide the foregoing coverages, as well as any other coverage that ENGINEER considers necessary. ENGINEER will require that all subcontractors maintain a comprehensive commercial general liability policy with a minimum limit of at least \$2,000,000 per occurrence. Any exclusion shall first be approved by CITY. It is the responsibility of the ENGINEER to assure compliance with this provision. The CITY accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor. Subcontractors shall provide waiver of subrogation in favor of the CITY on all required policies, and additional insured on a primary and non-contributory basis for general liability and automobile liability.
- F. With reference to the foregoing insurance requirement, Contractor shall specifically endorse applicable insurance policies as follows:
- (1). The City of Ennis shall be named as an additional insured with respect to General Liability and Automobile Liability.
 - (2). Additional insured for the City of Ennis should be on a primary and non-contributory basis.
 - (3). All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - (4). A waiver of subrogation in favor of the City of Ennis shall be contained in the Workers Compensation and all liability policies.

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- (5). All insurance policies shall be endorsed to require the insurer to immediately notify the CITY of any material change in the insurance coverage.
- (6). All insurance policies shall be endorsed to the effect that the CITY will receive at least thirty- (30) days' notice prior to cancellation or non-renewal of the insurance.
- (7). All insurance policies, which name the CITY as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (8). Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (9). Contractor may maintain reasonable and customary deductibles, subject to approval by the CITY.
- (10). Insurance must be purchased from insurers that are financially acceptable to the CITY.

IX. PROFESSIONAL LIABILITY

- A. ENGINEER shall be responsible for the use and employment of reasonable skill and care befitting the profession in the designs, drawings, plans, specifications, data, reports and designation of materials and equipment provided by ENGINEER for the Project covered by this Contract. Approval by CITY shall not constitute nor be deemed a release or waiver of the responsibility and liability of ENGINEER for the accuracy and competency of such designs, drawings, plans, specifications, data, reports and designation of materials and equipment. Contractor shall be responsible for the actual supervision of Construction operations and safety measures involving the work, his employees and the public, but the ENGINEER, on behalf of the CITY, shall advise the Contractor of any items requiring the attention and action of the Contractor after notification to the CITY. ENGINEER shall immediately make the CITY aware of any fault or defect in the project, including any errors, omissions, or inconsistencies in the ENGINEERS Documents or Instruments of Service.
- B. If services include periodic visits to the site to observe work performed by the Project Contractor, ENGINEER shall be responsible for exercising reasonable care and skills befitting the profession to assure that the Contractor performs the work in general accordance with Contract Documents and to endeavor to safeguard the CITY against defects and deficiencies in the work; provided, however, ENGINEER does not guarantee or insure the work completed by the Contractor. During visits to the construction site, and on the basis of the ENGINEER'S on-site observations as an experienced and qualified design professional, ENGINEER shall keep the CITY informed on the extent of the progress of the work, and shall advise the CITY of material and substantial defects and deficiencies in the work of Contractors that are discovered by the ENGINEER or otherwise brought to the ENGINEER'S attention in the

course of construction, shall not exercise whatever rights the CITY may have to disapproved work and materials as failing to conform to the Contract Documents.

- C. In connection with the services of Contractor's Project Representatives, ENGINEER shall use the usual degree of care and prudent judgment in the selection of competent Project Representatives, and the ENGINEER shall use its best efforts to see that the Project Representatives are on the job to perform their required duties.
- D. In performing these services, the ENGINEER shall not be responsible for the actual supervision of construction operations or for the safety measures that the Contractor takes or should take, except as stipulated in the Scope of Services.

X. INDEMNIFICATION

ENGINEER SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS, AND EMPLOYEES, HARMLESS FROM ANY CLAIMS, FINES, DEMANDS, LOSS, DAMAGE, SUIT, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, CAUSED BY THE NEGLIGENT, INTENTIONAL OR WILLFUL ACTS OR OMISSIONS OF THE ENGINEER, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACT LABORERS, OR SUBENGINEERS IN THE PERFORMANCE OF THIS AGREEMENT.

ENGINEER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS IN CONNECTION WITH THE SERVICES OF ENGINEER AND SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE ARISING OUT OF NONCOMPLIANCE WITH SUCH LAWS, RULES AND REGULATIONS, WITHOUT LIMITATION. ENGINEER SHALL ASSUME FULL RESPONSIBILITY FOR PAYMENTS OF FEDERAL, STATE AND LOCAL TAXES OR CONTRIBUTIONS IMPOSED OR REQUIRED UNDER THE SOCIAL SECURITY, WORKER'S COMPENSATION, AND INCOME TAX LAWS WITH RESPECT TO ENGINEER'S EMPLOYEES. FURTHER, ENGINEER SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGES, EXPENSES OR CLAIMS ARISING OUT OF ANY ACT OR OMISSION, INTENTIONAL TORT, OR FAILURE TO PAY A SUBENGINEER OR SUPPLIER OF ENGINEER, ITS OFFICERS, AGENTS AND EMPLOYEES IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER OR AS A RESULT OF ENGINEER'S FAILURE TO USE AND EMPLOY REASONABLE SKILL AND CARE BEFITTING THE PROFESSION IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. FURTHER, ENGINEER SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY,

ITS OFFICERS, AGENTS, AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGES, EXPENSES OR CLAIMS FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS AGREEMENT.

THE FOREGOING INDEMNIFICATION PROVISION SHALL APPLY TO ENGINEER REGARDLESS OF WHETHER OR NOT SAID LIABILITY, LOSS, DAMAGES, EXPENSES, OR CLAIMS IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER.

THE ENGINEER SHALL REQUIRE ALL OF ITS APPROVED SUBENGINEERS TO INCLUDE IN THEIR SUBCONTRACTS, A RELEASE AND INDEMNITY IN FAVOR OF THE CITY IN SUBSTANTIALLY THE SAME FORM AS ABOVE.

XI. ADDRESS OF NOTICE AND COMMUNICATIONS

CITY:	ENGINEER:
CITY OF ENNIS	[INSERT ENGINEERING FIRM]
P.O. Box 220	[INSERT ADDRESS]
Ennis, TX 75120-0220	[INSERT CITY, STATE, ZIP]
Attn: [INSERT CONTACT NAME]	Attn: [INSERT CONTACT NAME]
Title: [INSERT CONTACT TITLE]	Title: [INSERT CONTACT TITLE]

All notices and communications under this Contract shall be mailed or delivered to CITY and ENGINEER at the above addresses, respectively.

XII. CAPTIONS

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any Paragraph or in any way determine its interpretation or application.

XIII. SUCCESSORS AND ASSIGNMENTS

The CITY and the ENGINEER each binds themselves and their successors, executors, administrators, and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the CITY nor the ENGINEER shall assign, sublet, or transfer its interest in this Contract 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 to this Contract.

XIV. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the ENGINEER shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the ENGINEER shall violate any

of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, at least five days (5 D) before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, survey, drawings, maps, models, photographs, and reports prepared by the ENGINEER under this Contract shall become the property of the CITY, and the ENGINEER shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Contract by the ENGINEER and the CITY may withhold any payment to the ENGINEER for the purpose of setoff until such time as the exact amount of damages due the CITY from the ENGINEER is determined.

XV. TERMINATION FOR CONVENIENCE OF THE CITY

The CITY may terminate this Contract at any time by giving at least thirty (30) days' notice in writing to the ENGINEER. If the Contract is terminated by the CITY as provided herein, the ENGINEER shall be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the ENGINEER, other terms and conditions relative to termination, as contained in Paragraph 14 of this Contract shall apply.

XVI. CHANGES

The CITY may, from time to time, request changes in the scope of the services to be performed by the ENGINEER under this Contract. Such changes, including any increase or decrease in the amount of the ENGINEER'S compensation, which are mutually agreed upon by and between the CITY and ENGINEER shall be incorporated in written amendments to this Contract.

XVII. PERSONNEL

- A. The ENGINEER represents that it has, or shall secure at its own expense, all personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any other contractual relationship with the CITY.
- B. All of the services required hereunder shall be performed by the ENGINEER or under its supervision and all personnel engaged in the work shall be fully qualified and, as applicable, shall be authorized or permitted under State and local law to perform such services.
- C. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be similarly subject to each provision of this Contract.

XVIII. REPORTS AND INFORMATION

The ENGINEER shall, at such times and in such forms as the CITY may require, furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

XIX. INTEREST OF ENGINEER AND EMPLOYEES

The ENGINEER covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any study area or any parcels therein or any other interests which would conflict in any manner or degree with the performance of its services hereunder.

The ENGINEER further covenants that in the performance of this Contract, no person who has any such interest shall be employed by the ENGINEER.

XX. INCORPORATION OF PROVISIONS REQUIRED BY LAW

Each provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein and the Contract shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Contract shall be amended to make such insertion upon application by either party.

XXI. COMPLIANCE WITH LAWS

ENGINEER shall comply with all applicable laws, ordinances, and codes of the state, federal, and local governments and shall commit no trespass on any public or private property in performing any of the services embraced by this Agreement.

XXII. FEDERAL/STATE GRANTS

If federal or state grant funds are involved in the funding of the project, then the conditions of those respective grants are incorporated herein by reference and made a part hereof for all purposes.

XXIII. ASSIGNMENT

ENGINEER shall not assign, transfer, or encumber any right or interest in this Agreement, in whole or in part, without prior approval of the CITY.

XXIV. VENUE

Any action brought by either party based on any claim arising under or as a result

of this Contract shall be brought in a court of competent jurisdiction in Texas, with venue in Ellis County, Texas.

XXV. TIME IS OF THE ESSENCE

Time is of the essence for the completion of all work described in this contract. It is anticipated that all work will be completed within the time as stated in the Schedule from the date of execution, and that any delay in the completion of the work described herein shall constitute a breach of this contract.

XXVI. INDEPENDENT CONTRACTOR STATUS OF CONTRACTOR

Contractor shall be an independent contractor with respect to the performance of all Work, and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, borrowed servant, or representative of Owner in the performance of any Work (despite Contractor's obligation to comply with various rules and regulations of the Owner). The Work contemplated herein shall meet the approval of Owner and be subject to the general right of inspection of Owner to secure the satisfactory completion thereof. The actual performance and supervision of all Work shall be by Contractor, but Owner or its representatives shall have full and complete access to the Work site to determine whether the Work is being performed by Contractor in accordance with all provisions of this Contract and for reasons otherwise stated in this Contract. Owner is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any payments it owes Contractor. Neither Contractor nor its employees shall be entitled to receive any benefits which employees of Owner are entitled to receive, and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security on account of their work for Owner. Contractor is not the agent of Owner and is not authorized to make any representation, contract, or commitment on behalf of Owner unless specifically requested to do so, by Owner, in writing. No provisions herein shall be construed as creating a partnership, joint venture or other association whereby the Owner and Contractor would be jointly liable or liable as partners or co-ventures.

XXVII. RIGHTS AND REMEDIES

The rights and remedies provided by this Contract are given in addition to any other rights and remedies either Party may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to any or all other rights or remedies.

XXVIII. NO WAIVER OF RIGHTS

If either party fails to enforce any of the provisions of this Contract or any rights hereunder or fails to exercise any election provided in the Contract, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of the Contract. The failure of either party to exercise any of these provisions, rights or elections will not preclude or prejudice such party from later enforcing or exercising the same or any other provisions, rights or elections, which it may have under this Contract.

XXIX. ENTIRE AGREEMENT

The Contract Documents sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, between or among the parties, except as specifically provided herein. Except as explicitly set forth herein, there are no promises, conditions, representations, understanding, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect among the Parties.

XXX. HEADINGS

The Paragraph headings included in this Contract are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

XXIV. COUNTERPARTS

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement, effective when counterparts have been signed by each - and delivered to - the other Parties; it being understood that all Parties need not sign the same counterparts.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another via either a dial-up connection or by the worldwide web), by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the document's original graphic and pictorial appearance, or by combination of such means, constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by electronic means as described shall be deemed to be their original signatures for all purposes.

XXV. EXHIBITS

ENGINEER affirms and verifies the statutorily required provisions found in Ex. B. All referenced Exhibits are incorporated for all purposes as part of this Agreement and are included as part of the Contract Documents, which consist of this agreement and its attached and incorporated exhibits, and the allowance for and allocation of risk, and the required statutory clauses.

[Signatures on Page following]

ACCEPTED:

CITY:

CITY OF ENNIS, TEXAS

PROPOSED AND AGREED TO:

ENGINEER FIRM:

[INSERT ENGINEER FIRM]

MAYOR

BY: _____
[INSERT TITLE]

DATE: _____ DATE: _____

ATTEST:

ATTEST:

CITY SECRETARY

(OFFICER OR SECRETARY)

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT "A"
Rates for Services Provided and Scopes of Services

**EXHIBIT "B"
Statutorily Required Provisions**

1. ENGINEER affirms that it has submitted the necessary forms to comply with Texas Gov't Code Section 2252.908, Certificate of Interested Parties (Form 1295, <https://www.ethics.state.tx.us/forms/1295.pdf>) and Chapter 176, Texas Local Gov't Code, Conflict of Interest Questionnaire (Form CIQ, <https://www.ethics.state.tx.us/forms/CIQ.pdf>) and has returned a fully executed copy of the latter as an attachment to this executed contract and proof of the former to the City after filing with the Texas Ethics Commission, as required by the referenced provision of the Texas Government Code.
2. Verification Regarding Firearm Entities or Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under § 2274.002 (b) TEX. GOV'T. CODE, (i) the ENGINEER verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the ENGINEER will not discriminate during the term of the contract against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Chapter 2274, Tex. Gov't. Code, to the extent the applicable provision in Chapter 2274.002, Tex. Gov't. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "firearm entity or firearm trace association" shall have the meaning assigned to the terms in § 2274.001 (6), (7), Tex. Gov't. Code. ENGINEER understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit
3. Verification Regarding Energy Company Boycotts. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under § 2274.002, Tex. Gov't. Code, (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) as amended, ENGINEER hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with § 2274.002, Tex. Gov't. Code, as amended, to the extent that § 2274.002, Tex. Gov't. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in § 809.001, Tex. Gov't. Code. ENGINEER understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.
4. Certification Regarding Terrorist Organizations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2252.151-.154 Tex. Gov't. Code, ENGINEER hereby certifies that it and its parent company, wholly or majority- owned subsidiaries, and other affiliates, if any, is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. ENGINEER understands "affiliate" to mean an entity that controls, is controlled by, or is

under common control with the Underwriter and exists to make a profit.

5. Certification Regarding Boycott of Israel To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Sections 2271.001-002 Tex. Gov't. Code, ENGINEER and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, further certifies and verifies that it does not boycott Israel and agrees that it will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. (Tex Gov't. Code §§ 2270.001-.002, 808.001-.006, .051-.057, .101-.102) The foregoing verification is made solely to comply with Chapter 2271, Tex. Gov't. Code, to the extent the applicable provision in Chapter 2271.001, Tex. Gov't. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott Israel" shall have the meaning assigned to such term in § 808.001(1), Tex. Gov't. Code. ENGINEER understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.