



## City of Wharton

120 E. Caney Street ° Wharton, TX 77488  
Phone (979) 532-2491 ° Fax (979) 532-0181

April 10, 2019

Re: Engineering Services for the Hazard Mitigation Grant Program, DR-4269, Severe Storms and Flooding for the City of Wharton Warning Siren System

Dear Professional Service Providers:

Attached is a copy of the City's Request for Proposals for engineering/architect/surveyor professional services. These services are being solicited to assist the City of Wharton in its implementation of a contract for the Hazard Mitigation Grant Program, DR-4269, Severe Storms and Flooding for the City of Wharton Warning Siren System awarded by the Texas Division of Emergency Management (TDEM).

The submission requirements for this proposal are also included on the attached Request for Proposal (RFQ) form. Firms and/or individuals should have past experience with federally funded programs. Please submit a proposal of services and statement of qualifications to:

City of Wharton Warning Siren System Engineering RFQ

Paula Favors, City Secretary

120 E Caney St., Wharton, TX 77488

Along with your proposal, you must also include verification that your company as well as the company's principal is not listed (is not debarred) through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). Please include a print out of the search results.

The deadline for submission of proposals is Thursday, April 25, 2019 @ 2:00pm. The City of Wharton reserves the right to negotiate with any and all persons or firms submitting proposals, per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards.

The City of Wharton is an Affirmative Action/Equal Opportunity Employer.

Sincerely,

THE CITY OF WHARTON

By:

Tim Barker, Mayor

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## PUBLIC POSTING

The City of Wharton was awarded through the Texas Division of Emergency Management (TDEM) a sub-award for the Hazard Mitigation Grant Program, DR-4269, Severe Storms and Flooding for the City of Wharton Warning Siren System. Accordingly, the City is seeking to contract with a qualified Engineering/Architectural/Surveying Firm (individual/firm) to provide engineering services, determine scope of work and prepare all preliminary and final design plans and specifications and to conduct all necessary interim and final inspections. These services are being solicited to support mitigation goals of the City of Wharton. RFQ packets can be located at [www.cityofwharton.com](http://www.cityofwharton.com). Please submit 6 copies of your proposal of services and a statement of qualifications for the proposed services to the address below: City of Wharton Warning Siren System Engineering RFQ, Attn: Paula Favors, City Secretary, 120 E. Caney St., Wharton, Texas 77488. Proposals shall be received by the City no later than 2:00 p.m. on Thursday, April 25, 2019 to be considered. The City reserves the right to negotiate with any and all individuals or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals. The City of Wharton is an Affirmative Action/Equal Opportunity Employer.

## REQUEST FOR QUALIFICATIONS (RFQ) FOR ENGINEERING SERVICES

The City of Wharton is seeking to enter into an engineering services contract with a state-registered engineer/architect/surveyor to assist in the project implementation of a warning siren system construction project funded with FEMA Hazard Mitigation Funds through the Texas Division of Emergency Management. The following outlines this request for qualifications.

I. Scope of Work - The engineering contract will encompass all project-related engineering services, including but not limited to the following:

- Comprehensive engineering study
- Comprehensive environmental and historical assessment
- Final design plans and specifications
- Final budget
- Preparation of the bid packet and contract documents
- Conduct all field testing and inspections (interim and final); and
- Other special services as determined

Please specify actual tasks to be performed under each of these categories.

II. Statement of Qualifications - The City is seeking to contract with a competent engineering firm, registered to practice in the State of Texas that has experience in the following areas:

- Emergency Warning Siren Systems
- Public Works construction including but not limited to hazard mitigation projects;
- Registered and in good standing as a professional engineer per the Texas Engineering Practice Act
- Federally-funded construction projects; and
- Projects located in this general region of the state

As such, please provide within your proposal a list of past local government clients, as well as resumes of all engineers that will or may be assigned to this project if you receive the engineering services contract award.

Also, please provide a copy of your current certificate of insurance for professional liability.

III. Evaluation Criteria - The proposals received will be evaluated and ranked according to the following criteria:

Experience	60 points
Work Performance	25 points
Capacity to Perform	15 points
Total	100 points

IV. For this RFQ, Respondent's qualifications will be evaluated, and the most qualified Respondent will be selected, subject to negotiation of fair and reasonable compensation.

V. Deadline for Submission – Proposals must be received no later than April 25, 2019 @ 2:00pm at the following address: 120 E. Caney St., Wharton, Texas 77488

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**SELECTION OF A FIRM:** We shall review all material submitted, and if required schedule interviews with prospective consultants in order to select the most qualified. The City of Wharton is an Affirmative Action/Equal Opportunity Employer and reserves the rights to reject any and all proposals, extend the RFQ deadline and to waive formalities in our selection. Selection of a firm shall occur at a public meeting at the City's discretion.

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# Engineer/Architect/Surveyor Rating Sheet

Grant Recipient \_\_\_\_\_  
 Name of Respondent \_\_\_\_\_  
 Evaluator's Name \_\_\_\_\_

HMGP Project No. \_\_\_\_\_  
 Date of Rating \_\_\_\_\_

**Experience** -- Rate the respondent for experience in the following areas:

Comments

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Has previously designed Warning Siren type of projects	20	_____
2. Has worked on federally funded construction projects	15	_____
3. Has worked on projects that were located in this general region.	10	_____
Note: Location for A/E (Architect/Engineer) may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 2 CFR 200.319(b)		
4. Extent of experience in project construction management	15	_____
	_____	_____
<b>Subtotal, Experience</b>	60	_____

**Work Performance**

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Past projects completed on schedule	10	_____
2. Manages projects within budgetary constraints	5	_____
3. Work product is of high quality	10	_____
	_____	_____
<b>Subtotal, Performance</b>	25	_____

**NOTE:** Information necessary to assess the respondent on these criteria should be gathered by contacting past/current clients.

**Capacity to Perform**

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Staff Level / Experience of Staff	5	_____
2. Adequacy of Resources	5	_____
3. Professional liability insurance is in force	5	_____
	_____	_____
<b>Subtotal, Capacity to Perform</b>	15	_____

**TOTAL SCORE**

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
<input type="checkbox"/> Experience	60	_____
<input type="checkbox"/> Work Performance	25	_____
<input type="checkbox"/> Capacity to Perform	15	_____
	_____	_____
<b>Total Score</b>	100	_____

STATE OF TEXAS           §  
  §  
COUNTY OF WHARTON   §

PROFESSIONAL ENGINEERING SERVICES CONTRACT

This is a Contract between the CITY OF WHARTON (“CITY”), acting by and through its Wharton City Council and duly authorized Honorable Mayor, Tim Barker; and \_\_\_\_\_, a Texas corporation and independent contractor, doing business in Texas (“Engineer”), acting herein by its duly authorized \_\_\_\_\_, \_\_\_\_\_, hereafter referred to as “party” or “parties”.

WHEREAS, the CITY desires to engage Engineer as an independent contractor to render certain technical and professional services necessary to complete the Project described as: DR-4269, Severe Storms and Flooding for the City of Wharton Warning Siren System.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1.    Scope of Services

Engineer agrees to perform the technical and professional services described in Exhibit "A" attached hereto and incorporated herein for all purposes. The parties by mutual agreement may provide for additional technical and professional services to be performed under the terms and conditions of this Contract and described under any additional “Work Orders” issued pursuant to Paragraph 12 of this Contract.

2.    Compensation

CITY will pay Engineer for the technical and professional services described in Exhibit "A" in accordance with the Performance Schedule as outlined Exhibit "C," and for a cost reimbursable, initial total amount of Basic Services Compensation which shall not exceed \$\_\_\_\_\_ for work relating to the above described Project, as financially outlined in Exhibit “B.”

3.    Method of Payment

A.    Compensation under all invoices shall be in accordance with percentages of engineering work completed, and at the hourly rates described in Exhibit "B." CITY shall pay Engineer its fees based on the presentation by Engineer to CITY of a monthly summary statement for all current amounts earned under the Contract, including the identity of persons engaged on the Project, their time, hourly rates and reimbursable charges. All necessary supporting documentation consisting of timesheets, travel vouchers, and third-party receipts and invoices confirming and verifying the accuracy of the fees and expenses will be maintained by the Engineer at its Bellaire, Texas offices for three (3) years after Project completion and will be made available for CITY audit upon request. CITY will then attempt to pay Engineer its fees within ten (10) calendar days after the CITY approval, but in no event later than thirty (30) calendar days after presentation of an accurate monthly statement by Engineer to CITY. A charge of 6% per annum may be added to its billing for any delinquent payments not made by the CITY within thirty (30) calendar days. CITY shall have initial sole discretion in the approval or disapproval of any compensation to Engineer,

and any disputed amounts will be discussed and negotiated in good faith between the senior management of CITY and Engineer.

- B. Engineer shall keep the above referenced accurate records of any technical, professional, hourly and reimbursable services included within the Scope of Services described in Exhibit "A." It is recognized and acknowledged by Engineer that the CITY is a tax-exempt, public municipal corporation, and that the CITY can provide Engineer with certificates demonstrating the CITY's tax-exempt status and that Engineer shall not incur taxes that will be passed through to the CITY, including no application of sales taxes to boundary surveys.

4. Engineer's Standard of Care

Engineer shall provide its services under this Contract with the same degree of care, skill and diligence as is ordinarily provided by a professional engineer under similar circumstances for a similar project and shall provide professional consultations and advice to the CITY during the performance of the services under this Contract as outlined in the Scope of Services.

5. Ownership of Documents

- A. As part of the total compensation which CITY has agreed to pay Engineer for the professional services to be rendered under this Contract, Engineer agrees that all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs and reports which are produced by Engineer are, and will remain, the property of the CITY. Engineer shall have the right to use such work products for Engineer's purposes on this Project. The above notwithstanding, Engineer shall retain all rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary information provided pursuant to this Contract, whether or not such proprietary information was modified during the course of providing the Services. CITY agrees that it will use such documents solely in connection with the Project covered by this Agreement and for no other purpose. Drawings and reports will be provided to CITY on both paper and electronic file formats.

The completed tracings and master specifications sheets shall remain the property of the Engineer, and reproduction of them in whole or in part, shall not be used on additions to the Project or on any other project, except upon separate, future written Agreement between the CITY and Engineer.

- B. Copyright or Patent Infringement Indemnification: **THE ENGINEER SHALL DEFEND ACTIONS OR CLAIMS CHARGING INFRINGEMENT OF ANY COPYRIGHT OR PATENT BY REASON OF THE USE OR ADOPTION OF ANY DESIGNS, DRAWINGS OR SPECIFICATIONS SUPPLIED BY HIM, AND HE SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER FROM LOSS OR DAMAGE RESULTING THEREFROM, PROVIDING HOWEVER, THAT THE OWNER, WITHIN FIVE (5) CALENDAR DAYS AFTER RECEIPT OF ANY NOTICE OF INFRINGEMENT OR OF SUMMONS IN ANY ACTION THEREFOR, SHALL HAVE FORWARDED THE SAME TO THE ENGINEER IN WRITING.**

6. Insurance

- A. The Engineer agrees to maintain for the duration of this Contract, the insurance coverages and limits as described below. The Engineer must deliver to the CITY a certificate(s) of insurance evidencing that such policies are in full force and effect within five (5) business days of notification of the CITY'S intent to award a Contract. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within five (5) business days may cause the Contract acceptance to be rescinded by the City. The CITY reserves the right to obtain complete, certified copies of all required insurance policies at any time.

The requirements as to types and limits, as well as the CITY'S review or acceptance of insurance coverage to be maintained by Engineer, is not intended to, nor shall in any manner limit or qualify the liability and obligations assumed by the Engineer under the Contract.

- (1) Commercial General Liability Insurance – Limit of liability not less than \$1,000,000.00 per occurrence. Engineer agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent, providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent engineering subconsultant/subcontractor contractual liability.
- (2) Professional Errors and Omissions Liability Insurance – Limit of liability not less than \$2,000,000.00 per claim(s) made. Engineer agrees to maintain Professional (Errors & Omissions) Liability coverage to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay damages by reason of any act, malpractice, error or omission of the Engineer, or any person employed or acting on the Engineer's behalf (including but not limited to subconsultants/subcontractors). For policies written on a "claims-made" basis, Engineer agrees to maintain a retroactive date prior to or equal to the effective date of this Contract, and that continuous coverage will be maintained, or a supplemental extended reporting period will be purchased, with a minimum reporting period not less than two (2) years after the completion of this Contract. The Engineer is solely responsible for any additional premium for the supplemental extended reporting period.
- (3) Comprehensive Business Automobile Liability Insurance – Limit of liability not less than \$1,000,000.00 per occurrence. Engineer agrees to maintain a standard ISO version Business Automobile Liability policy, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Should the Engineer not own any automobiles, the business auto liability requirements shall be amended to allow the Engineer to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.
- (4) Workers' Compensation Insurance & Employers' Liability Insurance – Texas Statutory minimum coverage and 500,000.00/\$500,000.00/\$500,000.00 coverages. The Engineer agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Engineer shall require the subconsultant/subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subconsultant/subcontractor.



- B. Engineer shall add the City of Wharton, together with its Council Members, officers and employees, as “Additional Insureds” on all required insurance policies, except worker's compensation, employers’ liability and professional errors and omissions insurance.
- C. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their respective company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required basic information referenced or indicated thereon. CITY shall have no duty to pay or perform under this Contract until such Certificate(s) shall have been delivered to CITY and no officer, employee or agent of CITY shall have the authority to waive this requirement.

CITY reserves the right to review the insurance requirements of this Paragraph 6. during the effective period of this Contract and any extension or renewal hereof, and to modify insurance coverages and respective limits when deemed necessary and prudent by the CITY, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will CITY allow modification whereupon CITY may incur increased risk. Engineer may be entitled to more or less compensation depending upon the City’s actions regarding any insurance coverage adjustments.

The Engineer’s financial integrity is an essential consideration for the CITY, therefore, subject to the Engineer’s right to maintain reasonable deductibles in such amounts as are approved by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the actual full insurance policies and all endorsements thereto, as they apply to the coverage limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto, or dictated by the underwriter of any such policies). Upon such request by CITY, Engineer shall exercise reasonable efforts to accomplish such changes and policy coverages, and Engineer shall pay any adjusted cost thereof, prior to seeking any Contract price adjustment from the CITY.

Engineer agrees that with respect to the above requirements, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Appropriate insurance coverages shall include coverages for Engineer’s obligations contained in the Contract.
2. Provide for an endorsement that the “other insurance” clause shall not apply to the City of Wharton, as an Additional Insured shown on the policy.
3. Workers’ Compensation and Employers’ Liability policies will provide a waiver of subrogation in favor of the City of Wharton.
4. Engineer and/or insurance underwriter shall notify CITY in the event any notice of cancellation, non-renewal or material change in coverage occurs, and shall give such notices not less than thirty (30) calendar days prior to the change, or cancellation, or due to non-payment of premiums, which notice must be accomplished by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

City of Wharton  
City Manager  
120 E. Caney Street  
Wharton, Texas 77488

If Engineer fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance coverage(s), and deduct and retain the amount of the premiums for such insurance coverage(s) from any sums earned and due to Engineer under the Contract; however, procuring of said insurance by CITY is an alternative to the other remedies CITY may have, and is not the exclusive remedy for failure of Engineer to maintain said insurance or to secure such endorsement(s). In addition to any other remedies CITY may have upon Engineer's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, CITY shall have the right to order Engineer to stop work hereunder, and/or withhold any payments(s) which become due to Engineer hereunder, until Engineer demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Engineer may be held responsible for payments of proven damages to persons or property resulting from any Engineer's, its employees', or agents' negligent performance of work covered under this Contract.

7. **INDEMNIFICATION AND LIMITATION OF LIABILITY**

**ENGINEER SHALL INDEMNIFY AND SAVE HARMLESS THE CITY OF WHARTON AND ITS RESPECTIVE COUNCIL MEMBERS, OFFICERS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, THE NEGLIGENT ACTS OF ENGINEER OR ITS AGENTS OR EMPLOYEES, IN THE EXECUTION OF PERFORMANCE OF THIS CONTRACT.**

**TO THE EXTENT ALLOWED BY TEXAS LAW GOVERNING PUBLIC ENTITIES, ENGINEER'S TOTAL LIABILITY TO CITY FOR ANY LOSS OR DAMAGES FROM CLAIMS ARISING OUT OF, OR IN CONNECTION WITH, THIS CONTRACT FROM ANY CAUSE INCLUDING ENGINEER'S STRICT LIABILITY, BREACH OF CONTRACT, OR PROFESSIONAL NEGLIGENCE, ERRORS AND OMISSIONS, SHALL NOT EXCEED THE RESPECTIVE AND APPROPRIATE LIMITS OF THE ENGINEER'S VARIOUS LIABILITY INSURANCE COVERAGES AS SPECIFIED IN PARAGRAPH 6 A. (1) – (4) HEREIN. SHOULD ANY INDEMNIFIED LOSS NOT BE COVERED BY SUCH INSURANCE POLICIES AND LIMITS, THEN THE ENGINEER'S TOTAL LIABILITY FOR ANY LOSS SHALL NOT EXCEED ONE MILLION DOLLARS. CITY HEREBY RELEASES ENGINEER FROM ANY LIABILITY EXCEEDING SUCH AMOUNTS.**

8. Addresses for Notices and Communications

CITY

City of Wharton  
City Manager  
120 E. Caney Street  
Wharton, Texas 77488  
Attn: Andres Garza, Jr.  
City Manager  
Telephone: (979) 532-4811  
Facsimile: (979) 532-0181

NOTE:

CITY DESIGNATED PROJECT  
REPRESENTATIVE SHALL BE  
IDENTIFIED IN EXHIBIT "D".

Engineer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices and communications under this Contract shall be mailed or hand delivered to the CITY and Engineer at the above addresses, and sender shall retain a receipt of such delivery.

9. Successors and Assignments

The CITY or Engineer each bind itself and its successors, executors, administrators and assigns to the other party of this Contract in respect to all covenants of this Contract. Except as noted in the first part of this Paragraph, neither the CITY nor 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 City Council Member, officer, or employee of the CITY.

10. Termination of Contract for Cause

If, through any cause, Engineer shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if Engineer shall violate any of the covenants, agreements, warranties or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to Engineer of such termination and specifying the date thereof, at least ten (10) calendar days before the effective date of such termination. In such event, all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Engineer under this Contract shall become the property of the CITY, except as provided by Paragraph 5 of this Contract, and Engineer shall be entitled to receive just and equitable final compensation for any work satisfactorily completed hereunder provided such compensation is approved by the CITY in its sole discretion. The method of compensation herein shall be as provided in Paragraph 3.A. of this Contract.

Notwithstanding the above, Engineer shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any intentional and/or negligent act or omission, or any breach of the Contract by Engineer, and the CITY may withhold any payments to Engineer for the purpose of reasonable setoff until such time as the exact amount of damages due the CITY, from Engineer, is determined.

Engineer agrees that the CITY shall have all rights and remedies afforded to it at law to recover any damages sustained by the CITY in connection with the work performed by Engineer under the Contract. In the alternative, the CITY shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

11. Termination for Convenience of the Parties

Engineer or the CITY may terminate this Contract for its convenience at any time by giving at least thirty (30) calendar days notice in writing to the other party. If the Contract is terminated by the CITY and/or Engineer as provided herein, Engineer will be paid for the time and work properly provided, and expenses incurred up to the termination date, if such final compensation is approved by the CITY, in its sole discretion. All finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Engineer under this Contract shall become the property of the CITY, except as provided by Paragraph 5 of this Contract, and Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder, provided such final compensation is approved by the CITY in its sole discretion. The method of compensation herein shall be as provided in Paragraph 3.A. of this Contract and as detailed in the Exhibits.

Notwithstanding the above, Engineer shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any intentional and/or negligent act or omission, or any breach of the Contract by Engineer, and the CITY may withhold any payments to Engineer for the purpose of reasonable setoff until such time as the exact amount of damages due the CITY from Engineer is determined.

Engineer agrees that the CITY shall have all rights and remedies afforded to it at law to recover any damages sustained by the CITY in connection with the work performed by Engineer under the Contract. In the alternative, the CITY shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

12. Changes

The CITY may, from time to time, request changes in the Scope of the Services of Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of Engineer's compensation, or time for performance, which are mutually agreed upon by and between the CITY and Engineer, shall be incorporated in written amendments to this Contract. Any such "Work Orders" shall be executed by the Mayor of the CITY, or his other authorized representative as may be designated by the City Council.

13. Reports and Information

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

14. Civil Rights

Pursuant to Chapters 106 and 110 of the Texas Civil Practice and Remedies Code and CITY local policies, no person shall, on the grounds of race, religion, gender, sexual orientation, age, physically challenged condition or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of Engineer and the CITY.

15. Incorporation of Provisions Required by Law

Each provision and clause required by State and federal law to be inserted into this Contract shall be mutually deemed to be included 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, this Contract shall be mutually amended to make such insertion, on application by either party.

16. Entire Agreement

This Contract and its Exhibits “A” – “D”, and any future written Work Orders constitute the entire agreement and supersedes all prior draft or oral agreements and informal understandings between the parties concerning the subject matter of this Contract.

17. Waiver

The failure on the part of either party herein at any time to require the performance by the other party, of any portion of this Contract, shall not be deemed a waiver of, or in any way affect that party's rights to later enforce such provision, or any other provision. Any waiver by any party herein of any provision hereof, shall not be taken or held to be a waiver of any other provision hereof, or any other breach hereof.

18. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

19. Survival

Any and all representations, conditions and warranties made by Engineer under this Contract **ARE OF THE ESSENCE OF THIS CONTRACT** and shall survive the execution, delivery and termination of it, and all statements by Engineer contained in any document required by the CITY, whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.

20. Force Majeure

In the event that the CITY or Engineer shall be prevented from completing performance of its obligations under this Contract by an Act of God, or other occurrence whatsoever, which is beyond the control of the CITY or Engineer, and the CITY or Engineer have taken reasonable measures to remove or mitigate such Force Majeure, then the CITY or Engineer may be excused from any further performance of their respective obligations and undertakings, or said obligations and undertakings shall be reasonably and mutually modified by the parties.

21. Governing Law

This Contract is governed by the laws of the State of Texas and all obligations of the parties under this Contract are performable in Wharton County, Texas.

22. Time for Performance

Engineer's technical and professional services described in Exhibit "A" shall be completed in accordance with the Performance Schedule as outlined in Exhibit "C," except to the extent timely performance is prevented by Force Majeure.

23. Attorney's Fees

If it is necessary for either party herein to file a cause of action at law or in equity against the other party due to: (a) a breach of this Contract by the other party and/or; (b) any intentional and/or negligent act or omission by the other party arising out of this Contract, the non-breaching or non-negligent party shall be entitled to reasonable attorney's fees and court costs, and any necessary supporting disbursements, in addition to any other relief to which it is legally entitled.

24. Cumulative Mutual Remedies

In the event of default by a party herein, the other party shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret, or enforce, the terms of the Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

25. State or Federal Laws

This Contract is subject to all applicable federal and State laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, State or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any party's right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

26. No Third-Party Beneficiary

The parties are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any third-party person or entity, other than the parties hereto.

27. Dispute Resolution

In the event a dispute arises between the parties to this Contract, then as a condition precedent to any legal action by either party, or binding arbitration, the parties shall first refer the dispute to upper management for good faith negotiations for ten (10) calendar days, and if not then resolved, then the parties agree to participate in at least one session of non-binding mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally, but each party shall bear its own legal fees for the mediation. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Wharton County, Texas, unless another location is mutually agreed upon. If the parties cannot agree on a mediation service or mediator, then the

matter shall be submitted to the American Arbitration Association, Dallas or Houston Division, for further administration.

DRAFT

EXECUTED in triplicate originals on this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED in triplicate originals on this \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF WHARTON

ATTEST:

\_\_\_\_\_  
Name: Paula Favors  
Title: City Secretary

By: \_\_\_\_\_  
Name: Tim Barker  
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, of \_\_\_\_\_, a Texas corporation on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2019, by the Honorable Tim Barker, Mayor of the CITY OF WHARTON, TEXAS

\_\_\_\_\_  
Notary Public, State of Texas



**EXHIBIT "A"**

**DESIGN AND CONSTRUCTION OBSERVATION SCOPE OF SERVICES FOR THE**

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I. THE Engineer agrees to perform the following Engineering services for the PROJECT:

A. General: The Engineer shall serve as the CITY'S professional representative in the planning design and observation of construction of the Project and shall give consultation and advice to the CITY during the performance of his Services.

B. Basic Services of the Engineer:

(1) Design Phase:

After written authorization to proceed with the Design Phase, Engineer shall:

(a) On the basis of the accepted preliminary design documents prepare for incorporation in the Contract Documents, final drawings to show the character and scope of the work to be performed by the contractors on the Project (hereinafter called "Drawings"), and Specifications.

(b) Furnish to the CITY such documents and design data as may be required for, and assist in the preparation of, the required documents so that CITY may obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

(c) Advise the CITY of any adjustments to his latest opinion of probable Project Cost caused by changes in scope, design requirements or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

(d) Prepare bid forms, notice to bidders, instructions to bidders, general conditions and supplementary conditions and other related documents generally based upon the CITY'S standard bidding and construction form documents to be provided to Engineer by the CITY.

(e) Furnish up to eight (8) copies of the above documents and present and review them in person with the CITY.

(2) Construction Phase:

After written authorization to proceed with the Construction Phase, the Engineer shall:

(a) Assist the CITY in obtaining bids or negotiating competitive sealed proposals for each separate prime contract for construction or equipment.

(b) Consult with and advise CITY as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Contract Documents.

(c) Consult with and advise CITY as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.

(d) Assist CITY in evaluating bids or competitive sealed proposals and in assembling and awarding contracts.

(e) Consult with and advise CITY and act as its representative as provided in the Standard General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and authority of the Engineer as assigned in said Standard General Conditions shall not be modified without the Engineer's written consent. All of the CITY'S instructions to Contractor(s) will be issued through the Engineer who will have authority to act on behalf of the CITY to the extent provided in said Standard General Conditions except as otherwise provided in writing.

(f) Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he shall not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of work; he shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). His efforts will be directed toward providing assurance for CITY that the completed Project will conform to the Contract Documents, but he shall not be responsible for the failure of the Contractor(s) to perform the construction work in accordance with the Contract Documents. During such visits and on the basis of his onsite observations he shall keep the CITY informed of the progress of the work, shall endeavor to guard the CITY against defects and deficiencies in the work of Contractor(s) and may disapprove or reject work as failing to conform to the Contract Documents.

(g) Review and approve Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which any Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.

(h) Issue all instructions of CITY to Contractor(s); prepare routine change orders as required; he may, as CITY'S representative, require special inspection or testing of the work; he shall act as interpreter of the requirements of the Contract Documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of CITY and Contractor(s) relating to the execution and progress of the work and all other matters and questions related thereto; but the Engineer shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

(i) Based on his onsite observations and on his review of Contractor(s)' applications for payment and the accompanying data and schedules, determine the amounts owed to Contractor(s) and approve in writing payments to Contractor(s) in such amounts. Such approvals of payment will constitute a representation to CITY, based on such observations and review, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his approval), but by approving an application for payment the Engineer will not be deemed to have represented that he has made any examination to determine how or for what purpose any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the Contractor(s)' work, materials or equipment has passed to the CITY free and clear of any attempted lien, claims, security

interests or encumbrances, or that he has made a thorough and comprehensive examination to determine the extent to which the Contractor has performed in accordance with the Contract Documents.

(j) Conduct a review to determine if the Project is substantially complete and a final review to determine if the Project appears to have been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that the Engineer may approve, in writing, final payment to each Contractor.

(k) The Engineer shall not be responsible for the acts or omissions of any Contractor, any subcontractor or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except his own employees and agents) at the Project site or otherwise performing any of the work of the Project.

(l) Prepare for the CITY, within sixty (60) calendar days after completion of the construction, a set of record prints marked "Record Drawings" showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to Engineer and which Engineer considers significant.

(m) Provide assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance. CITY will be furnished copies of all shop drawings, equipment literature, wiring diagrams, etc., submitted to the Engineer for approval by the Vendor.

C. Additional Services of Engineer:

(1) General:

If authorized in writing by the CITY, the Engineer shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Service; these will be paid for by the CITY.

(a) Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

(b) Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the CITY.

(c) Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, CITY'S schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the Engineer's control.

(d) Providing renderings or models for the CITY'S use.

(e) Preparing documents for alternate bids requested by CITY for work which is not executed or documents for out of sequence work.

(f) Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the CITY.

(g) Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for interior design, selection of furniture and furnishings, communications, acoustics, kitchens and landscaping.

(h) Services during out of town travel required of the Engineer, other than visits to the Project site as required by Paragraph I.B. (1) (b) of Exhibit "A".

(i) Additional or extended services during construction made necessary by: (1) work damaged by fire or other cause during construction; (2) a significant amount of defective or neglected work of any Contractor; (3) prolongation of the contract time of any prime contract by more than sixty (60) calendar days; (4) acceleration of the work schedule involving services beyond normal working hours; and (5) default by any Contractor.

(j) Construction staking for the Project.

(k) Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.

(l) Preparation of operating and maintenance manuals.

(m) Services after completion of the Construction Phase, such as inspections during any workmanship guarantee and/or equipment warranty periods and reporting observed discrepancies under warranties/guarantees called for in any contract for the Project.

(n) Preparing to serve or serving as a consultant or witness for CITY in any litigation, public hearing or other legal or administrative proceeding involving the Project.

(o) Additional services in connection with the Project, including services normally furnished by the CITY and services not otherwise provided for in this Contract.

(p) If requested by the CITY or recommended by the Engineer and agreed to in writing by the CITY, a Resident Project Representative and assistant(s) will be furnished and will act as directed by the Engineer in order to provide more extensive CITY representation at the Project site during the Construction Phase. Such services, if required, will be paid for by CITY as indicated in Paragraph I.C. of Exhibit "B", and Attachment One.

(q) Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the Engineer shall endeavor to provide further protection for CITY against defects and deficiencies in the work, but the furnishing of such resident Project representation will not make the Engineer responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

D. Reimbursable Services of the Engineer: Reimbursable services shall include the following items when authorized in advance and in writing by the CITY: transportation and subsistence of principals and

employees on special trips to the Project or to other locations; long distance telephone calls as required to monitor the work of the Contractor; reproduction of drawings and specifications in addition to those already specified in Paragraphs I.B.(1)(e) of Exhibit "A" to this Contract.

II. The CITY agrees to provide the Engineer with complete information concerning the requirements of the Project and to perform the following services:

a. Access to the Work: The CITY shall guarantee access to and make all provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform such work as surveys and inspections in the development of the Project.

b. Consideration of the Engineer's Work: The CITY shall give thorough considerations to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the Engineer, and shall inform the Engineer of all decisions within a reasonable time so as not to delay the work of the Engineer.

c. Legal Requirements: The CITY shall hold promptly all required special meetings, serve all required public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the Project, and pay all costs incidental thereto.

d. Proposals: The CITY shall advertise for Bids or Competitive Sealed Proposals from prospective contractors, open the Bids or Competitive Sealed Proposals at the appointed time and place and pay all costs incidental thereto.

e. Protection of Markers: The CITY shall protect to the best of its ability, all stakes and other markers set by the Engineer prior to the assumption of such responsibility by the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the CITY as extra services of the Engineer.

f. Standards: The CITY shall furnish the Engineer with a copy of any local design and construction standards and related documents that the CITY shall require the Engineer to review, revise and follow in the preparation of final Contract Documents for the Project.

g. CITY'S Representative: The CITY shall designate in writing, in Exhibit "D" to this Contract, a single person to act as the CITY'S Representative with respect to the work to be performed under this Contract. The person designated as CITY'S Representative shall have complete authority to transmit instructions, receive information, interpret and define CITY'S policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the work covered by this Contract.

h. No Special or Consequential Damages: In no event shall Engineer be liable or obligated in any manner for special, consequential, or indirect damages, including by way of example but not by way of limitation, such (non-actual) damages as CITY may incur such as loss of use of property or equipment, loss of utility or airport profits, public plant or unit downtime.

**EXHIBIT "B"**

**COMPENSATION FOR ENGINEERING SERVICES  
FOR THE \_\_\_\_\_.**

I. THE CITY'S PAYMENTS TO THE ENGINEER:

A. General:

(1) Definitions of Construction Cost of the Project, as herein referred to, means the total cost of all work designed or specified by the Engineer, but does not include any payments to the Engineer or other consultants.

(2) Payments Withheld from Contractors: No deduction shall be made from the Engineer's compensation on account of any liquidated damages, or other amounts rightfully withheld from payments to Contractors.

(3) Abandoned or Suspended Work: If any work performed by the Engineer is abandoned or suspended in whole or in part by the CITY, the Engineer shall be paid for satisfactory services performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with any reasonable terminal expenses resulting therefrom, and including a profit commensurate to the profit margin provided for in Additional Services.

(4) Progress Payments: Once each month, the CITY shall pay the Engineer for professional services performed under Paragraphs 2. and 3. of this Contract in proportion to services performed during the period.

B. Payments for Basic Services of the Engineer: The CITY shall pay the Engineer for the Basic Services described in Paragraph 2. of this Contract, a cost reimbursable basic fee not-to-exceed \$ \_\_\_\_\_, with progress payments as herein provided. At the completion of each phase of the work, progress payments shall total the following percentages of the Basic Services fee:

(1) Final Plans and Contract Documents: \_\_\_\_\_%

(2) During Construction: \_\_\_\_\_%

C. Payments for Additional Services of the Engineer: The Engineer shall be reimbursed according to Attachment One, Schedule of Charges for any Additional Services authorized by the CITY and outlined under Paragraph I.C. of Exhibit "A". The potential Additional Services on this Project, along with the estimated costs thereof, are presented in Exhibit "B", Attachment "Two", Schedule of Additional and Reimbursable Services.

D. Payment for Reimbursable Services of the Engineer: The Engineer shall be reimbursed at cost plus 10% for the reimbursable services outlined under Paragraph I.D. of Exhibit "A". At the CITY'S option, it may elect to directly pay those persons, companies, corporations, etc., providing reimbursable services to the Engineer, thus avoiding the 10% surcharge the Engineer would be entitled to if the Engineer is responsible for making payment to vendors, subconsultants and subcontractors.

**EXHIBIT "B"**

**ATTACHMENT ONE  
SCHEDULE OF CHARGES**

I. Compensation for Engineering services pursuant to the cost reimbursable format, and not-to-exceed initial Basic Services Compensation, shall be on an hourly basis at the rates set forth below, which are subject to change annually on January 1, 2019 and any year thereafter.

II. Subcontract costs shall be billed at invoice cost plus 10% for oversight, administration, and processing paperwork.

III. KEY PERSONNEL:

A. Engineer proposes to perform the Services described above through the \_\_\_\_\_ will establish Project requirements; determine Engineer's policy matters; ensure satisfactory completion of the Engineering work; and be directly responsible for the Project. The Project Manager shall not be removed from the Project assignment without the written approval of the CITY.

B. Additional Key Personnel listed below shall not be removed from the Project assignment without the written approval of the CITY:

DRAFT

**EXHIBIT "B"**  
**ATTACHMENT TWO**  
**SCHEDULE OF BASIC SERVICES**

<b>I.</b>	<b><u>TASK</u></b>	<b><u>ESTIMATED COST</u></b>
A.	Field surveys for preparation of any background drawings required for design .....	\$ _____
B.	Design Phase Engineering.....	\$ _____
C.	Construction Phase Engineering.....	\$ _____
D.	Reimbursable.....	\$ _____
	<b>Total Cost.....</b>	<b>\$ _____</b>

If other Additional or Reimbursable Services are required to complete this Project, the estimated costs for these tasks will be presented to the CITY pursuant to Paragraph 12 of the Contract for negotiation and approval, once their need and magnitude are mutually determined.

DRAFT



**EXHIBIT "C"**

**PERFORMANCE SCHEDULE FOR ENGINEERING  
SERVICES ON THE \_\_\_\_\_.**

- I. Engineer understands that the Project Scope of Services outlined herein should be completed within \_\_\_\_\_ (\_\_\_) calendar days. Engineer proposes to initiate the Project \_\_\_\_\_ (\_\_\_) days after CITY's written authorization to proceed. It is understood that Engineer's ability to complete the sequential tasks and design phases within the established time frames is dependent, in large part, on the receipt of any existing, available, and necessary data from CITY at the beginning of the Project, and CITY's timely response to Engineer with review comments and input.**
- A. Surveying & Preliminary Phase: \_\_\_\_\_ calendar days
- B. Design Phase: \_\_\_\_\_ calendar days
- C. Construction Phase: as agreed upon by City with contractor(s)

DRAFT

**EXHIBIT "D"**

**CITY'S DESIGNATED PROJECT REPRESENTATIVE FOR THE**

\_\_\_\_\_.

- I. \_\_\_\_\_ - Administrative
- II. \_\_\_\_\_ - Field Representative

DRAFT