

THE STATE OF TEXAS §

COUNTY OF DALLAS §

Professional Services Contract
with Birkhoff, Hendricks & Carter, LLP

THIS CONTRACT is entered into on this _____ day of _____, 2015, by and between the **CITY OF CARROLLTON, TEXAS**, a municipal corporation located in Dallas County, Texas, (hereinafter referred to as “City”), acting by and through its City Manager or his designee, and **Birkhoff, Hendricks & Carter, L.L.P.** (“hereinafter referred to as “Consultant”) whose address is 11910 Greenville Ave., Suite 600, Dallas, Texas 75243.

W I T N E S S E T H:

WHEREAS, City desires to obtain professional services from Consultant for the design of a 3-Million Gallon Josey Elevated Storage Tank, located at Josey Lane and Jamestown; and

WHEREAS, Consultant is an architectural, engineering, professional planning, urban design, or landscape architecture firm qualified to provide such services and is willing to undertake the performance of such services for City in exchange for fees hereinafter specified; NOW, THEREFORE,

THAT IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

Employment of Consultant

Consultant will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If Consultant is representing that it has special expertise in one or more areas to be utilized in this Contract, then Consultant agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II.

Scope of Services

Consultant shall perform such services as are necessary to prepare plans and specifications for the Josey Elevated Storage Tank specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”). Attachment “A” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed _____ and No/100 Dollars (\$_____). This total payment for services includes Consultant's ordinary expenses. Additional expenses, which are extraordinary in nature, shall be approved in advance by City in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the City pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses not approved in writing in advance by the City shall remain the sole responsibility of the Consultant.

Consultant will bill City on a percent complete basis in accordance with Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, Consultant will not provide such additional services until authorized by City in writing to proceed. The scope of services shall be strictly limited. City shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless City shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month Consultant will submit to City an invoice supporting the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice City shall make monthly payments in the amount shown by Consultant's approved monthly statements and other documentation submitted.

Nothing contained in this Contract shall require City to pay for any work that is unsatisfactory as determined by City or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which City may have if Consultant is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV.

Revisions of the Scope of Services

City reserves the right to revise or expand the scope of services after due approval by City as City may deem necessary, but in such event City shall pay Consultant equitable compensation for such services. In any event, when Consultant is directed to revise or expand the scope of services under this Section of the Contract, Consultant shall provide City a written proposal for the entire costs involved in performing such additional services. Prior to Consultant undertaking any revised or expanded services as directed by City under this Contract, City must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by Consultant that any compensation not specified in Paragraph III herein above may require Carrollton City Council approval and is subject to the current budget year limitations.

V.
Term

This Contract shall begin on the date first written above, and shall terminate when City has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI.
Contract Termination Provision

This Contract may be terminated at any time by City for any cause by providing Consultant thirty (30) days written notice of such termination. Upon receipt of such notice, Consultant shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.
Ownership of Documents

All materials and documents prepared or assembled by Consultant under this Contract shall become the sole property of City and shall be delivered to City without restriction on future use. Consultant may retain in its files copies of all drawings, specifications and all other pertinent information for the work. Consultant shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII.
Insurance Requirements

- A. Before commencing work, Consultant shall, at its own expense, procure, pay for and maintain during the term of this Contract the following insurance written by companies approved by the state of Texas and acceptable to the City. Consultant shall furnish to the City of Carrollton Engineering Director certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be provided to the City.
1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
4. Professional Liability Insurance to provide coverage against any claim which the consultant and all consultants engaged or employed by the consultant become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$2,000,000 per claim, \$2,000,000 annual aggregate.

NOTE: If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *thirty-six (36) months* following completion of the contract and acceptance by the City of Carrollton.

- B. With reference to the foregoing required insurance, the consultant shall endorse applicable insurance policies as follows:
1. A waiver of subrogation in favor of City of Carrollton, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
 2. The City of Carrollton, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
 3. All insurance policies shall be endorsed to the effect that City of Carrollton will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

IX.

Right to Inspect Records

Consultant agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions relating to this Contract. Consultant agrees that City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that City shall have access during

normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. City shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

City and Consultant each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither City nor Consultant shall assign or transfer its interest herein without the prior written consent of the other.

XI.

Consultant's Liability

Acceptance of the final plans by the City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by City for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by City for any defect in the designs, working drawings, specifications or other documents and work prepared by said Consultant, its employees, associates, agents or sub-consultants.

XII.

Indemnification

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS") SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 (A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the City shall have the right to approve counsel to be retained by Consultant in fulfilling its obligation to defend and indemnify the City. Consultant shall retain approved counsel for the City within seven (7) business days after receiving written notice from the City that it is invoking its right to indemnification under this Contract. If Consultant does not retain counsel for the City within the required time, then the City shall have the right to retain counsel and the Consultant shall pay these attorneys' fees and expenses. The City retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

XIII.

Independent Contractor

Consultant's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of City in the performance of this Contract. No term or provision of or act of Consultant or City under this Contract shall be construed as changing that status. Consultant will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

XIV.

Default

If at any time during the term of this Contract, Consultant shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then City shall have the right, if Consultant shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy due to Consultant's nonperformance under this Contract, the cost to City to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to Consultant hereunder, Consultant shall be liable for and shall reimburse City for such excess. Consultant's liability under this provision shall be limited to the total dollar amount of this Contract.

City's remedies for Consultant's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at City's sole exclusive choice:

- (a) Specific performance of the Contract;

(b) Re-performance of this Contract at no extra charge to City; or,

(c) Monetary damages in an amount not to exceed the greater of:

(1) The amount of any applicable insurance coverage Consultant is required to purchase and maintain under this Contract plus any deductible amount to be paid by Consultant in conjunction with said coverage regardless of whether Consultant has actually purchased and maintained said coverage; or,

(2) The total dollar amount of this Contract.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XV. Changes

City may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between City and Consultant shall be incorporated by written modification to this Contract.

XVI. Conflict of Interest

Consultant covenants and agrees that Consultant and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by Consultant pursuant to this Contract will be conducted by employees, associates or subcontractors of Consultant.

XVII. Confidential Information

Consultant hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. Consultant shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning City of Carrollton, its affiliates and subsidiaries, and all oral and written information concerning City or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by Consultant or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of Consultant, or are required to be disclosed by a governmental authority.

XVIII.
Mailing Address

All notices and communications under this Contract to be mailed to City shall be sent to the address of City's agent as follows, unless and until Consultant is otherwise notified:

Thomas S. Geier, P.E.
City of Carrollton
P.O. Box 10535
Carrollton, Texas 75011

Notices and communications to be mailed or delivered to Consultant shall be sent to the address of Consultant as follows, unless and until City is otherwise notified:

John Birkhoff, P.E.
Birkhoff, Hendricks & Carter, LLP
11910 Greenville Ave., Suite 600
Dallas, Texas 75243

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XIX.
Applicable Law

The Contract is entered into subject to the Carrollton City Charter and ordinances of City, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Consultant will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Consultant's income. Situs of this Contract is agreed to be Dallas County, Texas, for all purposes, including performance and execution.

XX.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXI.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXII.
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXIII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXIV.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXV.
Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Carrollton, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Dallas County, Texas.

XXVI.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (City and Consultant) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with City or Consultant or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

CITY OF CARROLLTON

By: _____
Marc Guy
Assistant City Manager

Date Signed: _____

ATTEST:

Krystle F. Nelinson
City Secretary

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

Meredith A. Ladd
City Attorney

Cesar J. Molina, Jr., P.E.
Director of Engineering

Birkhoff, Hendricks & Carter, L.L.P.
(Consultant's Name)

By: _____
Name: John Birkhoff, P.E.
Title: Managing Partner
Date Signed: _____

THE STATE OF TEXAS §
COUNTY OF _____§

This instrument was acknowledged before me on the _____ day of, _____,
20_____, by _____ in his capacity
as _____ of _____, a
_____ Corporation, known to me to be the person
whose name is subscribed to the foregoing instrument, and acknowledged that he executed
the same on behalf of and as the act of _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF
_____, 20_____.

Notary Public _____ County, Texas

My commission expires _____

Attachment "A"

Scope of Services

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2015, between City and Undersigned providing for professional services.
2. Undersigned shall prepare construction plans, specifications, details and opinions of cost for the following:

PREPARATION OF PLANS, SPECIFICATIONS AND CONSTRUCTION
ADMINISTRATION FOR THE JOSEY 3.0 MILLION GALLON ELEVATED
STORAGE TANK (HWL 699.0), AS DESCRIBED BELOW.

3. SCOPE OF WORK:

I. Preparation of Plans and Specifications

A. Removal of the Existing Josey Elevated Storage Tank

- Design Phase

Preparation of plans, specifications and bidding documents for the removal of the 1.5 Million Gallon Elevated Storage Tank.

- 1) Include in specifications options for disposal of existing tank and tank structure.
Options to include:
 - Selling structure after red lead primer is removed
 - Scraping structure and having steel and red lead primer melted down
- 2) Provisions in specifications for all steel to be removed from City property.
- 3) Provisions in specifications for all existing foundations to remain, foundations will be cut a minimum 8-inches below grade.
- 4) Provisions made in the specifications for the Contractor to clean-up the area, including red lead paint chips from the structure.
- 5) Provisions will be made in specifications to properly transport and dispose of red lead primer waste and/or steel plate containing red lead primer.

B. 3.0-MG Josey Composite Elevated Storage Tank

- Design Phase

Preparation of plans, specifications and bidding documents for a 3.0 MG Composite Elevated Storage Tank based on the following items:

- 1) Specifications based on following standards:
 - American Water Works Association (AWWA)
 - American National Standards Institute (ANSI)
 - American Society of Testing Materials (ASTM)
 - National Sanitation Foundation (NSF)
 - American Concrete Institute (ACI)
- 2) Tank Accessories to include the following:

➤ Pipe Connections ➤ Over Flow & Drain Piping ➤ Connection to Existing SCADA	➤ Wet Riser ➤ Access and Truck Doors ➤ Antenna Bracket
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- Tank Ladders
 - Roof Hatches
 - Vent
 - Mixing System
 - Valve & Electric Valve Operations
 - Wireless Ready for Third Party Vendors
 - Provide Facilities to Mount City Owned Communication Equipment on the Top of the Tank.
 - Obstruction Light
 - Interior Light System
 - Exterior Light System
 - Electrical System
 - Chloramine Analyzer
- 3) Provisions for connecting to the City's existing monitoring and control system, including modifications to increase capacity from 1.5 to 3.0 million gallons in the HMI Software.
 - 4) Provisions for reestablishing grass on site.
 - 5) Provisions for site irrigation system.
 - 6) Provisions for concrete driveway to access tank truck door.
 - 7) Provisions for aluminum ornamental fence around the site.
 - 8) The limits of the property, contours on site, and piping is as shown on the records drawings provided by the City. Information from record drawings will be placed in the construction plans.
 - 9) The benchmark on site will be verified by field surveys.
 - 10) The high-water level (HWL) shall be elevation 699 feet.
 - 11) The coating system will not include red lead primer. Specifications will be prepared that will be in conformance with the Texas Commission on Environmental Quality (TCEQ) Regulations for containment systems.
 - 12) Provisions for erosion control devices to be erected along the property lines as needed.
 - 13) Preparation of FAA Notice of Proposed Construction form for City execution.
 - 14) Work with City to have existing communication facilities removed from existing structure.

II. Bidding Phase

- A. Upon completion of the design phase, Undersigned shall deliver to City original tracings of construction plans (11-inch x 17-inch), opinion of probable construction cost and special provisions.
- B. Assist the staff in advertising for bids. The project will be bid as one project.
- C. Attend City's Pre-Bid Conference at City facilities.
- D. Assist City during opening of bids.
- E. Obtain past work history from low bidder and formulate opinion from information received and provide the City a recommendation for award of construction contract.

III. Construction Phase

- A. Attend Pre-Construction Conference at City facilities.
- B. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to

submitting to the Engineer. Review by the Engineer does not relieve the Contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents. Shop drawings will be transmitted in .PDF electronic format.

- C. Provide responses to requests for information or clarification to City or Contractor.
- D. Assist in preparation of routine change orders for this project as they pertain to the original scope of services.
- E. Accompany the City during their final inspection of the project.
- F. The design engineer will visit the site at appropriate intervals as construction proceeds to observe progress and formulate opinion as to quality of work as it relates to contract documents. These visits specifically exclude any responsibility by the Engineer for job safety or means and methods of construction.
- G. Prepare Record Drawings based on Contractor's mark-ups. Submit compact disk with design files in .PDF format. All construction plan sheets will be prepared utilizing AutoCAD 2013 or later. No specific computer aided drafting and design specifications will be utilized.
 - 1) Undersigned makes no warranty as to the compatibility of these files beyond the specified release of the above stated software.
 - 2) Because data stored on electronic media can deteriorate undetected or be modified, City agrees that the Undersigned will not be held liable for completeness or correctness of electronic media after an acceptance period of sixty (60) days after delivery of electronic files.
 - 3) It is understood that the electronic files are instruments of service. Where there is a conflict between the hard copy drawings and the electronic files, the hard copy files will govern in all cases.
 - 4) Both parties acknowledge mutual non-exclusive ownership of the electronic files and each party may use, alter, modify or delete the files without consequence to the other party.

IV. Other Services

- A. Complete topographic surveys of the site, including tying in Electrical Transmission Towers, High School Parking Lot, and Josey Lane.
- B. Reproduction cost for printing of review documents. City will print all documents for bidding, contracting, and construction.
- C. Field and laboratory testing to determine heavy metal content of coating systems on existing steel ground storage reservoirs to be removed and lead content in surrounding soils.
- D. Provide Geotechnical Investigation, including two borings on-site, one copy of report will be provided to the City. Geotechnical report will be included in bidding documents. (Geotechnical Investigation to be completed by Henley-Johnston & Associates, Inc. of Dallas, Texas.)

- E. Provide Quality Control Testing for the City on the 3.0-MG Ground Storage Reservoir. Services to be provided by Henley-Johnston & Associates, Inc. of Dallas, Texas. Services will include:
- Pier Inspection / Foundation Inspection
 - Concrete Testing
 - Steel Inspection
 - Welding Inspections
 - Paint Inspection
- F. Complete subsurface search of existing utilities (SUE to be completed by Axis Construction).

V. Exclusions

Services specifically excluded from this scope include, but are not necessarily limited to the following:

- A. Providing an on-site representative.
- B. Environmental impact statements and assessments.
- C. Fees for permits or advertising.
- D. Certification that work is in accordance with plans and specifications.
- E. Environmental cleanup.
- F. Trench safety designs.
- G. Phasing of Contractors work.
- H. On-site safety precautions, programs and responsibility.
- I. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).
- J. Title searches, boundary surveys, or property surveys.
- K. Fiduciary Responsibilities to the City.

VI. City's Responsibility

- A. The City will provide information regarding objectives and requirements for the Project.
- B. The City will designate a single representative to act in its behalf, with respect to the project, who shall examine documents submitted by the Undersigned and, to the extent allowed by law, shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Undersigned's services.
- C. All of the City's plat, easement and construction plan files will be made available for use. City will provide copies at no cost.
- D. Access to all City manholes and clean-outs, access to all City right-of-way and easements. If manhole lids are bolted down the Engineer will contact the City's Utility Operation Department and schedule a time when they can meet with the Engineer and remove the manhole lid.
- E. City's on-site representative's construction reports on a weekly basis.
- F. Record drawings of the Josey Elevated Storage Tank and Geotechnical Report.

- G. City's 200-scale topography map in the vicinity of the project. Both hard copies and electronic format versions. Electronic format shall be in .DXF or .DWG format.
- H. Current standard construction details.
- I. City will print and distribute documents for permitting, bidding and construction.
- J. To have communication facilities removed from the Tank before removal of Tank.
- K. To have communication facilities from the Site (buildings, racks, etc.) removed prior to removal of Tank.

VII. Completion Schedule

Notice to Proceed	November 5, 2015
Submit Preliminary Plans to City	February 15, 2016
Receive Comments Back From City	February 29, 2016
Complete Final Plans	March 11, 2016
Advertise Project	April 2016
Open Bids	May 2016
Award Contract	June 2016
Notice to Proceed	July 2016
Final Inspection	December 2017?

END OF ATTACHMENT "A"

Attachment "B"

COMPENSATION

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2015, between City and Undersigned providing for professional services.

Opinion of Probable Construction Cost \$5,300,000.00 to \$5,800,000.00

2. UNDERSIGNED will accomplish the services outlined in the tasks presented in Exhibit "A" of the Agreement. Payment for engineering services described under Paragraphs I, II, and III shall be a lump sum amount of \$210,000.00. Breakdown of project is as follows:

		<u>Fee</u>	
Preliminary Plans	50%	.....	\$105,000
Final Plans	35%	.....	\$ 73,500
Bidding Phase	1%	.....	\$ 2,100
Construction Phase	14%	.....	<u>\$ 29,400</u>
			\$210,000

Other services, as provided in Paragraph IV, shall be on the basis of invoice cost times 1.15. Survey Crew shall be based on \$140.00 per hour, plus mileage at IRS limit.

Design Surveys	.....	\$4,800
Reproduction	.....	\$1,000
Heavy Metal Testing	.....	\$7,500
Geotechnical Investigation (Foundation)	.....	\$8,000
Quality Control Testing for the 3.0-MG Tank	.....	\$60,000
Subsurface Search (SUE)	.....	<u>\$6,000</u>
		\$87,300
Total Not To Exceed:		<u>\$297,300</u>

Other services will be invoiced based on actual cost plus 15% at the above not to exceed total amount.

3. The UNDERSIGNED's Fee shall provide compensation for all printing of review documents for the CITY, computations and all other work required for the preparation of documents of this Project.

4. UNDERSIGNED will invoice the CITY for the value of partially completed services, as outlined in Exhibit "A", according to the services accomplished each month on a percent complete basis for Phases I, II and III in the overall project, with Phases IV based on actual expenses as described above. Payments on account for basic services shall be made monthly within thirty (30) days of invoice. All invoices shall be submitted in a format provided by the City and shall be accompanied by a status report on all completed work.

All other services will be considered as supplementary services, performed at the request of the CITY and billed as defined below.

5. The undertaking of UNDERSIGNED to perform professional services under this Agreement extends only to those services specifically described herein. If, upon the request of the CITY, UNDERSIGNED agrees to perform supplementary services ("Supplementary Services"), the CITY shall pay UNDERSIGNED for the performance of such Supplementary Services an amount (in addition to all other amounts payable under this Agreement) equivalent to (i) the hours expended by personnel for additional services multiplied by the then current hourly rates, plus (ii) the reimbursable expenses ("Reimbursable Expenses") so incurred by UNDERSIGNED in providing such services, multiplied by a factor of 1.15. UNDERSIGNED agrees to submit a written opinion of probable costs for additional services. The CITY is only liable to pay for said services after agreeing in writing to pay the cost submitted in the opinion.

END OF ATTACHMENT "B"