



**CITY OF WHARTON
CITY COUNCIL PUBLIC WORKS COMMITTEE
MEETING**

**Monday, September 13, 2021
5:30 PM**

***CITY HALL-120 EAST CANEY STREET
WHARTON, TEXAS 77488***

**NOTICE OF
CITY OF WHARTON
CITY COUNCIL PUBLIC WORKS COMMITTEE MEETING**

Notice is hereby given that a City Council Public Works Committee Meeting will be held on Monday, September 13, 2021 at 5:30 PM at the Wharton City Hall, 120 East Caney Street, Wharton, Texas, at which time the following subjects will be discussed to-wit:

SEE ATTACHED AGENDA

Dated this 9th day of September 2021.


By: 
Joseph R. Pace, City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council Public Works Committee Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board, at City Hall of said City or Town in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on September 9, 2021, at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

The Wharton City Hall is wheelchair accessible. Access to the building and special parking is available at the primary entrance. Persons with disabilities, who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at (979) 532-4811 Ext. 225 or by FAX (979) 532-0181 at least two (2) days prior to the meeting date. BRAILLE IS NOT AVAILABLE.

Dated this 9th day of September 2021.

CITY OF WHARTON

By: 
Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
City Council Public Works Committee Meeting
Monday, September 13, 2021
City Hall - 5:30 PM

Call to Order.

Roll Call.

Public Comments.


Review & Consider:

1. Minutes from the meeting held July 26, 2021.
2. Resolution: A resolution of the Wharton City Council approving Change Order No. 1 with E Contractors USA for the CR 222 Well and Storage Tank Access Road and authorizing the Mayor to execute all documents related to said change order.
3. Resolution: A resolution of the Wharton City Council awarding a contract for the construction of the Colorado River Flood Control Hughes Street Utility Relocation and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
4. Resolution: A resolution of the Wharton City Council awarding a contract for the replacement of the sanitary sewer main at 1310 Linwood and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
5. Engineering Contracts for Utility Relocations for TxDOT I-69 Project:
 - A. Resolution: A resolution of the Wharton City Council authorizing a contract with Jones and Carter for engineering services for the US 59 Public Utility Relocation and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
 - B. Resolution: A resolution of the Wharton City Council authorizing a contract with Jones and Carter for engineering services for the WWTP No. 2 Major Amendment-Outfall Relocation Permit and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
6. Resolution: A resolution of the Wharton City Council approving a professional engineering services contract with Jones and Carter Engineering for the WWTP No. 1 Headworks Coarse Screen Replacement Project and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.

Adjournment.

City of Wharton
120 E. Caney Street
Wharton, TX 77488

PUBLIC WORKS COMMITTEE

Meeting Date:	9/13/2021	Agenda Item:	Minutes from the meeting held July 26, 2021.
Attached are the draft minutes from the meeting held July 26, 2021.			
City Manager: Joseph R. Pace		Date: Thursday, September 9, 2021	
Approval: 			
Mayor: Tim Barker			

**MINUTES
OF
CITY OF WHARTON
PUBLIC WORKS COMMITTEE MEETING
City Hall, 120 East Caney Street, Wharton, Texas
Monday, July 26, 2021 5:30 p.m.**

City Manager, Joseph R. Pace, declared a meeting of the City Council Public Works Committee duly open for the transaction of business at 5:30 p.m.

Committee Members present: Councilmember, Terry Freese; Councilmember, Don Mueller and Councilmember, Clifford Jackson.

Committee Member absent: None.

Staff Members present: City Manager, Joseph R. Pace; Assistant to the City Manager, Brandi Jimenez; Finance Director, Joan Andel; Community Development Director, Gwyn Teves; Assistant to the Public Works Director, Amy Horelica and Airport Manager, David Allen.

Staff Members absent: Public Works Director, Anthony Arcidiacono.

Visitors present: Mayor, Tim Barker; Councilmember, Alice Heard-Roberts; Councilmember, Russell Machann and Mr. Chad Emmel, P.E.-BEFCO Engineering.

Public comments. There were no public comments.

The first item on the agenda was to review and consider minutes from the meeting held July 19, 2021. Councilmember, Clifford Jackson, made a motion to approve the minutes as presented. Councilmember, Don Mueller, seconded the motion. All voted in favor.

The second item on the agenda was to review and consider City of Wharton 2020 Street Improvement Project:

A. Request for Change Order No. 4 to the 2020 Street Improvement Project.

Assistant to the Public Works Director, Amy Horelica, presented a copy of Change Order No. 4 to the contract for the 2020 Street Improvement Project to the Committee. Mr. Chad Emmel, P.E. with BEFCO Engineering stated the Change Order would extend the contract completion date to complete the August 31, 2021 punch list and remove remaining unfinished streets, parking lots and striping from the contract. After some discussion, Councilmember, Terry Freese, made a motion to recommend to the City Council to approve Change Order No. 4 to the City of Wharton 2020 Street Improvement Project. Councilmember, Clifford Jackson, seconded the motion. All voted in favor.

The third item on the agenda was to review and consider a resolution of the Wharton City Council awarding a contract for the Wharton Regional Airport Paving Project and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. Assistant to the Public Works Director, Amy Horelica, presented a copy of a memorandum from Public Works Director, Anthony Arcidiacono, regarding the failure of the road and a section of the road that needed to be widened so planes could avoid a telephone pole in the utility easement. Assistant to the Public Works Director, Amy Horelica, stated the following contractors were contacted for a quote:

1. Rexco, Inc.

2. Angel Bothers.
3. Brannon Paving.
4. Sylva Construction.

After some discussion, Councilmember, Terry Freese, made a motion to recommend to the City Council to approve a contract for the Wharton Regional Airport Paving Project to Sylva Construction. Councilmember, Don Mueller, seconded the motion. All voted in favor.

The fourth item on the agenda was to review and consider a resolution of the Wharton City Council awarding a contract to Texas Pride Utilities for the emergency repairs at WWTP No. 2 and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. Assistant to the Public Works Director, Amy Horelica, stated to the Committee that on Friday, June 11, 2021 a cave in was found on the 21” main trunk line that feeds WWTP #2 on US 59 and the emergency repair was done by Texas Pride Utilities. She stated that Texas Pride Utilities knows the history and the condition of the current state of the line (depth, condition, soil, etc.). She stated they did an emergency spot repair on the damaged area and the remainder of the clay 21” sanitary sewer main was still in poor condition and that the City risks damaging it further if it used another company to clean the line. She stated that Texas Pride Utilities offered all three of the services, that others do not; they can clean, televise and do the CIPP process all together, so if they do damage the line during the cleaning, all equipment would be on site to repair if necessary. She stated that Texas Pride Utilities would charge \$43,435.00 to clean, televise and perform CIPP procedure. After some discussion, Councilmember, Clifford Jackson, made a motion to recommend to the City Council the approval of a contract to Texas Pride Utilities for the emergency repairs at WWTP No. 2. Councilmember, Terry Freese, seconded the motion. All voted in favor.

The fifth item on the agenda was adjournment.
The meeting adjourned at 5:50 p.m.

Joseph R. Pace, City Manager

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

PUBLIC WORKS COMMITTEE

Meeting Date:	9/13/2021	Agenda Item:	Resolution: A resolution of the Wharton City Council approving Change Order No. 1 with E Contractors USA for the CR 222 Well and Storage Tank Access Road and authorizing the Mayor to execute all documents related to said change order.
---------------	-----------	--------------	--

Attached you will find Change Order No. 1 from E Contractors that reflects the difference from the original quote for new materials and work added from Jones & Carter's recommendations.


After further soil testing by Terracon, the moisture content in the soil at the site was higher than originally planned. Jones & Carter has recommended adding lime to the existing road base and to do a proof roll before the new material is added to the road to provide maximum compaction and stabilization.

E Contractors USA LLC: \$25,715.25 (Approved 8/23/21)

E Contractors USA LLC: \$15,509.85 (Change Order No. 1)

E Contractors USA LLC: \$41,255.10 (Total)

Public Works Director Anthony Arcidiacono will be present to answer any questions.

City Manager: Joseph R. Pace	Date: Thursday, September 9, 2021
Approval: 	
Mayor: Tim Barker	



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX
77488
Phone (979) 532-2491 ext. 801 ° Fax
(979) 531-1744

MEMORANDUM

Date: September 7, 2021
To: Mr. Joseph R. Pace, City Manager
From: Anthony Arcidiacono, Public Works Director
Re: Change Order #1, CR 222 Access road to water well and storage tank

Attached please find change order #1 from E Contractors that reflects the difference from the original quote, to the new materials and work added from Jones & Carter's recommendations. After further soil testing by Terracon, the moisture content in the soil at the site was higher than originally planned. Jones & Carter has recommended adding lime to the existing road base and to do a proof roll before the new material is added to the road to provide maximum compaction and stabilization.

E Contractors USA LLC: \$25,715.25 (Approved 8/23/21)

E Contractors USA LLC: \$15,509.85 (Change Order #1)

E Contractors USA LLC: \$41,255.10 (Total)

I would like this placed on the City Council agenda for September 13, 2021

Should you have any questions, please contact me.

Thank you.

E Contractors USA LLC
 16554 Creek Bend Dr., Suite 200
 Sugar Land , Texas 77478
 Phone: (713) 493-2500
 Fax: (713) 493-2501

Project: 20-0200 - COW-Wharton Well & Water Plant
 Wharton, 77488

Prime Contract Potential Change Order #001: 20-0200 CO for Access Road (PO #2)

TO:	City of Wharton 120 East Caney Street Wharton, Texas 77488	FROM:	E Contractors USA LLC 16554 Creek Bend Dr., Suite 200 Sugar Land, Texas 77478
PCO NUMBER/REVISION:	001 / 0	CONTRACT:	2 - COW-Wharton Well & Water Plant PO No.81821-4
REQUEST RECEIVED FROM:		CREATED BY:	Paola Jerez (E Contractors USA LLC)
STATUS:	Pending - In Review	CREATED DATE:	8/30/2021
REFERENCE:		PRIME CONTRACT CHANGE ORDER:	None
FIELD CHANGE:	No		
LOCATION:		ACCOUNTING METHOD:	Amount Based
SCHEDULE IMPACT:		PAID IN FULL:	No
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$15,509.85

POTENTIAL CHANGE ORDER TITLE: 20-0200 CO for Access Road (PO #2)

CHANGE REASON: Client Request

POTENTIAL CHANGE ORDER DESCRIPTION: *(The Contract Is Changed As Follows)*
 CE #004 - 20-0200 CO for Access Road
 CR 222 Water Well Access Road

ATTACHMENTS:
[Co1 Access Road.pdf](#)

#	Budget Code	Description	Amount
1	31-0500.O Earthwork .Other	Access Road Lime Stabilization 6"	\$10,128.75
2	0-1000.O Overhead and Profit.Other	Contractor Fee 15% to PO & Lime Stabilization	\$5,381.10
Grand Total:			\$15,509.85

Pam Madrigal (Half Associates, Inc.)

City of Wharton
 120 East Caney Street
 Wharton, Texas 77488

E Contractors USA LLC
 16554 Creek Bend Dr., Suite 200
 Sugar Land, Texas 77478

 SIGNATURE DATE

 SIGNATURE DATE

 SIGNATURE DATE

**CITY OF WHARTON
RESOLUTION NO. 2021-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING CHANGE ORDER NO. 1 WITH E CONTRACTORS USA FOR THE CR 222 WELL AND STORAGE TANK ACCESS ROAD AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATED TO SAID CHANGE ORDER.

WHEREAS, The Wharton City Council wishes to approve Change Order No. 1 with E Contractors USA for the CR 222 Well and Storage Tank Access Road; and,

WHEREAS, The additional fee is requested for the new materials and work added from Jones & Carter; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor to execute all documents related to the change order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes Change Order No. 1 with E Contractors USA for the CR 222 Well and Storage Tank Access Road.

Section II. The Wharton City Council hereby authorizes the Mayor to execute all documents related to the change order.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 13th day of September 2021.

CITY OF WHARTON, TEXAS


By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

PUBLIC WORKS COMMITTEE

Meeting Date:	9/13/2021	Agenda Item:	Resolution: A resolution of the Wharton City Council awarding a contract for the construction of the Colorado River Flood Control Hughes Street Utility Relocation and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
<p>On August 18, 2021, proposals were received for the Construction of the Colorado River Flood Control Hughes Street Utility Relocation for the USACE Levee Project. There were three (3) proposals submitted for the Construction.</p> <p>Attached is the recommendation from Jones and Carter, who is the engineering firm on the utility relocations.</p> <p>Community Development Director Gwyn Teves will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, September 9, 2021	
Approval: 			
Mayor: Tim Barker			



City of Wharton

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

MEMORANDUM

DATE: September 7, 2021

FROM: Gwyneth Teves, Community Development Director

TO: Honorable Mayor and City Council

SUBJECT: Construction of Colorado River Flood Control Hughes Street Utility Relocation Proposals

On August 18, 2021, proposals were received for the Construction of the Colorado River Flood Control Hughes Street Utility Relocation for the USACE Levee Project. There were 3 proposals submitted for the Construction.

Attached is the recommendation from Jones and Carter, who is the engineering firm on the utility relocations.

It is my recommendation to move forward with their recommendation and award the contract to Aranda Industries, LLC.

If you should have any questions, please contact me at 979-532-2491 ext. 238. Thank You.



2322 W Grand Parkway North, Suite 150
Katy, Texas 77449-7821
Tel: 832.913.4000
Fax: 832.913.4001
www.jonescarter.com

Item-3.

August 23, 2021

Mr. Joseph R. Pace
City of Wharton
120 E. Caney Street
Wharton, Texas 77488

Re: Construction of Colorado River Flood Control Hughes Street Utility Relocation
City of Wharton
JC Job No. 05135-0224-00

Dear Mr. Pace:

We received bids for the Construction of the Colorado River Flood Control Hughes Street Utility Relocation for the City of Wharton via teleconferencing on August 18, 2021 at 11:00 AM. Bids were publicly opened and read at that time.

Three (3) reputable contractors submitted proposals for this work. A summary tabulation of the bids is enclosed for your review. Aranda Industries, LLC submitted the lowest Base Bid proposal in the amount of \$839,419.00.

We have worked with Aranda Industries, LLC in the past and find them to be an acceptable contractor. We recommend that the referenced contract be awarded to Aranda Industries, LLC on the basis of its proposal in the amount of \$839,419.00.

If you agree with this award, please execute all copies of this letter and return them to our office for further processing.

Sincerely,

Kristen Hennings, PE, CFM, LEED® Green Associate
Sr. Project Manager

Approved By: _____


Date: _____

KJH\js

K:\05135\05135-0224-00 City of Wharton Colorado River Flood Con\2 Design Phase\Bid Documents\Hughes\05135-0224a-00 ROA.docx

Enclosure

cc: Aranda Industries, LLC

		BID TABULATION SHEET			BIDS WERE RECEIVED IN THE OFFICE OF		
		City of Wharton			City of Wharton, Texas		
		Hughes Street Utility Relocations			Time: 11:00 AM		
		05135-0224-00			Date: August 18, 2021		
BIDDERS							
	C.E. Barker, Ltd.	TLC Construction Contract Services	Aranda Industries, LLC				
Total Base Bid	\$1,482,997.00	\$866,382.00	\$839,419.00				
Bid Bond	Y	Y	Y				
Addendum No. 1	Y	Y	Y				
Addendum No. 2	Y	Y	Y				
Mandatory Pre-Bid	Y	Y	Y				

OWNER: City of Wharton		BID NO. 1	BID NO. 2	BID NO. 3
PROJECT: Hughes Street Utility Relocations		C.E. Barker, Ltd.	TLC Construction Contract Services	Aranda Industries, LLC
DATE: August 18, 2021	TIME : 11:00 AM	33227 Forest West	11714 Charles Road	4206 Northwind Lane
ENGINEER: Jones & Carter, Inc.		Magnolia, TX 77354	Houston, TX 77041	Houston, TX 77014
JOB NO. : 05135-0224-00		281-252-3677	281-357-4069	281-501-0127

ITEM NO.	DESCRIPTION	UNIT	PLAN QUANTITY	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
BASE BID									
1	Move-in and start-up, including permits, performance bond, and payment bond for 100 percent (100%) of the contract amount.	LS	1	\$325,000.00	\$325,000.00	\$149,254.00	\$149,254.00	\$150,000.00	\$150,000.00
PAVING ITEMS									
2	Saw cut existing asphalt pavement, complete in place.	LF	2,006	\$30.00	\$60,180.00	\$3.00	\$6,018.00	\$6.00	\$12,036.00
3	Removal and disposal of existing asphalt pavement, complete in place. Excess material shall become property of the contractor and disposed of in a legal manor.	SY	654	\$60.00	\$39,240.00	\$9.00	\$5,886.00	\$15.00	\$9,810.00
4	1.5-inch HMA pavement (including materials, equipment, and labor), complete in place.	SY	654	\$215.00	\$140,610.00	\$47.00	\$30,738.00	\$95.00	\$62,130.00
SANITARY SEWER ITEMS									
5	Remove and replace 8-inch sanitary sewer pipe with 8-inch PVC sanitary sewer pipe via Open Cut method, over 12 foot depth, (including air testing, mandrel testing, bedding, backfill, and disposal of excess material), all materials, complete in place.	LF	775	\$373.00	\$289,075.00	\$246.00	\$190,650.00	\$240.00	\$186,000.00
6	Remove and replace 12-inch sanitary sewer pipe with 12-inch PVC sanitary sewer pipe via Open Cut Method, over 12 foot depth, (including air testing, mandrel testing, bedding, backfill, and disposal of excess material), all materials, complete in place. Excess material shall become property of the contractor and disposed of in a legal manor.	LF	40	\$398.00	\$15,920.00	\$455.00	\$18,200.00	\$260.00	\$10,400.00
7	12-inch PVC sanitary sewer pipe via Open Cut Method, over 12 foot depth, (including air testing, mandrel testing, bedding and backfill), complete in place.	LF	40	\$398.00	\$15,920.00	\$442.00	\$17,680.00	\$260.00	\$10,400.00
8	Removal of 6-inch force main via Open Cut method, all depths (including materials, equipment, labor, and disposal of excess material), all materials, complete in place.	LF	45	\$290.00	\$13,050.00	\$20.00	\$900.00	\$293.00	\$13,185.00
9	6-inch C-900 PVC force main, all depths (including bends, fittings, bedding, backfill, testing, and reconnection to existing 6" force main as directed by Engineer), complete in place.	LF	45	\$312.00	\$14,040.00	\$317.00	\$14,265.00	\$293.00	\$13,185.00
10	Reconnection of internal and external sanitary services (including regrouting and sealing at connection points), all depths, complete in place.	EA	36	\$5,433.00	\$195,588.00	\$825.00	\$29,700.00	\$2,637.00	\$94,932.00
11	Connect existing 4-inch sanitary sewer to proposed sanitary sewer manhole (including regrouting and sealing at connection points, bedding, backfill, and testing), complete in place.	EA	1	\$2,634.00	\$2,634.00	\$677.00	\$677.00	\$6,510.00	\$6,510.00

OWNER: City of Wharton				BID NO. 1 C.E. Barker, Ltd. 33227 Forest West Magnolia, TX 77354 281-252-3677		BID NO. 2 TLC Construction Contract Services 11714 Charles Road Houston, TX 77041 281-357-4069		BID NO. 3 Aranda Industries, LLC 4206 Northwind Lane Houston, TX 77014 281-501-0127	
PROJECT: Hughes Street Utility Relocations									
DATE: August 18, 2021				TIME: 11:00 AM					
ENGINEER: Jones & Carter, Inc.									
JOB NO.: 05135-0224-00									
ITEM NO.	DESCRIPTION	UNIT	PLAN QUANTITY	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
12	Connect existing 6-inch sanitary sewer to proposed sanitary sewer manhole (including bedding, backfill, and testing), complete in place.	EA	1	\$2,669.00	\$2,669.00	\$677.00	\$677.00	\$6,510.00	\$6,510.00
13	Connect existing 8-inch sanitary sewer to proposed sanitary sewer manhole (including regrouting and sealing at connection points, bedding, backfill, and testing), complete in place.	EA	3	\$2,669.00	\$8,007.00	\$677.00	\$2,031.00 *	\$6,510.00	\$19,530.00
14	Connect existing 12-inch sanitary sewer to proposed sanitary sewer manhole (including regrouting and sealing at connection points, bedding, backfill, and testing), complete in place.	EA	2	\$2,704.00	\$5,408.00	\$677.00	\$1,354.00	\$6,510.00	\$13,020.00
15	Connect proposed 12-inch sanitary sewer to existing sanitary sewer manhole. Hole in manhole to be cored (including (including regrouting and sealing at connection points, bedding, backfill, and testing), complete in place.	EA	1	\$2,704.00	\$2,704.00	\$1,905.00	\$1,905.00	\$7,210.00	\$7,210.00
16	External sanitary sewer drop pipe assembly, 3-6 foot depth, complete in place.	EA	3	\$2,321.00	\$6,963.00	\$1,205.00	\$3,615.00	\$3,010.00	\$9,030.00
17	External sanitary sewer drop pipe assembly, 6-9 foot depth, complete in place.	EA	1	\$2,010.00	\$2,010.00	\$1,205.00	\$1,205.00	\$5,670.00	\$5,670.00
18	Remove and replace extra depth manhole with new extra depth sanitary sewer manhole, 12-14 foot depth, (including equipment, and materials), complete in place. Excess material shall become property of the contractor and disposed of in a legal manor.	EA	3	\$11,955.00	\$35,865.00	\$13,104.00	\$39,312.00	\$10,150.00	\$30,450.00
19	Extra depth sanitary sewer manhole, greater than 12 foot depth, complete in place.	EA	3	\$11,205.00	\$33,615.00	\$10,961.00	\$32,883.00	\$7,700.00	\$23,100.00
20	Sanitary sewer force main air release manhole (including 2" air release valve, fittings, bedding, backfill, and testing), complete in place.	EA	2	\$12,576.00	\$25,152.00	\$21,176.00	\$42,352.00	\$15,027.00	\$30,054.00
21	Trench safety system for sanitary sewer, all depths and sizes, complete as specified.	LF	945	\$7.00	\$6,615.00	\$2.00	\$1,890.00	\$1.00	\$945.00
WATER LINE ITEMS									
22	Remove exist 6-inch PVC waterline, (including materials, equipment, labor, and disposal of excess materials), complete in place.	LF	133	\$207.00	\$27,531.00	\$30.00	\$3,990.00	\$249.00	\$33,117.00
23	6-inch C-900 AWWA (DR18) Class 150, waterline (including valves, fittings, bedding, backfill, testing, and reconnection to existing 6" waterline as directed by Engineer), complete in place.	LF	133	\$239.00	\$31,787.00	\$678.00	\$90,174.00	\$249.00	\$33,117.00

OWNER: City of Wharton				BID NO. 1 C.E. Barker, Ltd. 33227 Forest West Magnolia, TX 77354 281-252-3677		BID NO. 2 TLC Construction Contract Services 11714 Charles Road Houston, TX 77041 281-357-4069		BID NO. 3 Aranda Industries, LLC 4206 Northwind Lane Houston, TX 77014 281-501-0127	
PROJECT: Hughes Street Utility Relocations									
DATE: August 18, 2021				TIME : 11:00 AM					
ENGINEER: Jones & Carter, Inc.									
JOB NO. : 05135-0224-00									
ITEM NO.	DESCRIPTION	UNIT	PLAN QUANTITY	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
24	6-inch x 45° restrained joint bends (including fittings, thrust blocks, bedding, backfill, and testing), complete in place.	EA	20	\$1,660.00	\$33,200.00	\$435.00	\$8,700.00	\$826.00	\$16,520.00
25	Remove and salvage existing fire hydrant, (including materials, equipment, and labor), complete in place. Salvaged equipment shall become the property of the City and excess materials shall be taken to a designated city facility.	EA	1	\$3,188.00	\$3,188.00	\$1,574.00	\$1,574.00	\$2,870.00	\$2,870.00
26	Installation of salvaged fire hydrant, (including tee, 6" gate valve, and box), complete in place.	EA	1	\$5,774.00	\$5,774.00	\$7,652.00	\$7,652.00	\$7,700.00	\$7,700.00
27	Cut, plug, and abandon fire hydrant lead per Specification 02556, (including plugs, fittings, materials, equipment, and labor), all sizes, complete in place.	EA	1	\$1,453.00	\$1,453.00	\$517.00	\$517.00	\$2,730.00	\$2,730.00
28	Trench safety system for waterline, all depths and sizes, complete as specified.	LF	133	\$48.00	\$6,384.00	\$2.00	\$266.00	\$1.00	\$133.00
ADDITIONAL ITEMS									
29	Extra bank sand, as directed by the Engineer.	CY	25	\$15.00	\$375.00	\$27.00	\$675.00	\$45.00	\$1,125.00
30	Extra cement sand, as directed by the Engineer.	CY	25	\$35.00	\$875.00	\$41.00	\$1,025.00	\$60.00	\$1,500.00
31	Traffic control plan, per Texas MUTCD.	LS	1	\$60,000.00	\$60,000.00	\$96,457.00	\$96,457.00	\$20,000.00	\$20,000.00
32	Storm water pollution prevention (SWPP) measures, as directed by engineer.	LS	1	\$24,665.00	\$24,665.00	\$4,127.00	\$4,127.00	\$2,500.00	\$2,500.00
33	Bypass pumping (including equipment, labor, installation, operation, and maintenance), as specified by engineer.	LS	1	\$45,000.00	\$45,000.00	\$57,533.00	\$57,533.00	\$1,500.00	\$1,500.00
34	Construction staking to be performed by Jones & Carter, Inc. Staking to be performed one time only. All additional staking is at the expense of the contractor.	LS	1	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
TOTAL BASE BID						\$1,482,997.00		\$866,382.00	\$839,419.00

**CITY OF WHARTON
RESOLUTION NO. 2021-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE CONSTRUCTION OF THE COLORADO RIVER FLOOD CONTROL HUGHES STREET UTILITY RELOCATION AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, Proposals were received for the Construction of Colorado River Flood Control Hughes Street Utility Relocation on August 18, 2021; and,

WHEREAS, _____ was deemed the best lowest qualified bidder for the base bid amount of \$ _____; and,

WHEREAS, The Wharton City Council wishes to award a contract to _____ for Construction of Colorado River Flood Control Hughes Street Utility Relocation base bid amount of \$ _____; and,

WHEREAS, The City of Wharton and _____ wish to be bound by the conditions as set forth in the agreement; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor to execute the Construction of Colorado River Flood Control Hughes Street Utility Relocation contract.

Section II. The City of Wharton and _____ are hereby bound by the conditions as set forth in the contract.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 13th day of September 2021.

CITY OF WHARTON, TEXAS


By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

PUBLIC WORKS COMMITTEE

Meeting Date:	9/13/2021	Agenda Item:	Resolution: A resolution of the Wharton City Council awarding a contract for the replacement of the sanitary sewer main at 1310 Linwood and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
<p>The Public Works Department had received several calls from the area of 1310 Linwood. Upon investigation it was discovered that the existing 6" clay sanitary sewer main needed to be replaced. The 6" clay sanitary sewer main line is failing in multiple areas along the easement and causing cave-ins and sewer stoppages at houses upstream, causing a public safety hazard. It was determined that pipe bursting would be the safest, most cost-efficient way to replace this section of line.</p> <p>The following contractors were contacted for a quote:</p> <p>Horseshoe Construction, Inc.: \$36,470.00</p> <p>Texas Pride Utilities: \$24,920.00</p> <p>Mercer Construction: Mercer does not perform pipe bursting.</p> <p>Public Works Director Anthony Arcidiacono will be present to answer any questions.</p>			
		Date: Thursday, September 9, 2021	
Approval: 			
Mayor: Tim Barker			



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX
77488
Phone (979) 532-2491 ext. 801 ° Fax
(979) 531-1744

MEMORANDUM

Date: September 7, 2021
To: Mr. Joseph R. Pace, City Manager
From: Anthony Arcidiacono, Public Works Director
Re: 300' Pipe burst to replace 6" Sanitary Sewer Main (1310 Linwood)

Attached please find an ariel of the 300' section of 6" clay sanitary sewer main that needs to be replaced. After several calls from this area, it was discovered that the existing 6" clay sanitary sewer main line is failing in multiple areas along the easement and causing cave-ins and sewer stoppages at houses upstream, causing a public safety hazard. Pipe bursting will be the safest, most cost-efficient way to replace this section of line.

The following contractors were contacted for a quote:

Horseshoe Construction, Inc.: 8/26/2021, \$36,470.00

Texas Pride Utilities: 8/25/21, \$24,920.00

Mercer Construction: 8/23/21, I spoke to David Gregory, Mercer does not perform pipe bursting.

I would like this placed on the City Council agenda for September 13, 2021

Should you have any questions, please contact me.

Thank you.



Texas Pride Utilities

725 Carby Rd
Houston TX 77037

Item-4.

Estimate

Date	Estimate No.
8/25/2021	6933

TO:

City of Wharton TX
Pipe Bursting
8" HDPE

Our quotation include all labor and material for the installation of the each pay item on the list below. Any additional work will require written acceptance of quotation before additional work can be performed.

Item No	Unit	Description	Qty	Unit Price	Total
1	LS	MOBILIZATION	1	4,800.00	4,800.00
2	LF	PIPE BURSTING ON EXISTING 6" SANITARY SEWER MAIN WITH 8" HDPE COMPLETE IN PLACE TO INCLUDE ALL LABOR, TOOLS, EQUIPMENT AND MATERIALS.	320	38.00	12,160.00
3	LS	SERVICE RECONNECTION	3	800.00	2,400.00
4	LF	CCTV LINE, PRE AND POST	640	4.00	2,560.00
5	EA	CONNECTION TO MANHOLE	2	700.00	1,400.00
6	LS	RESTORATION BACK TO ORIGINAL CONDITIONS COMPLETE IN PLACE	320	5.00	1,600.00

Total	\$24,920.00
--------------	--------------------

Phone #
8326070707

E-mail
lgtexaspride@yahoo.com

Web Site
www.texasprideutilities.

PROPOSAL

August 26, 2021

Project Name: Wharton Pipe Bursting
 Owner: City of Wharton
 Proposal No: H0108262021-001

HORSESHOE CONSTRUCTION, INC. herein proposes to furnish all labor, materials, equipment, and services necessary to reconstruct the referenced project as described in the inclusions and exclusions according to the terms and conditions attached to this proposal.

PRICE PROPOSAL

Bid ITEM NO.	DESCRIPTION	APPROX. QUANTITY	U/M	UNIT PRICE	ESTIMATED AMOUNT
1	Mobilization	1	LS	\$15,000.00	\$15,000.00
2	8" Pipe Bursting	320	LF	\$55.00	\$17,600.00
3	Service Connection	3	EA	\$1,000.00	\$3,000.00
4	Obstruction removal (if needed)	1	EA	\$750.00	\$750.00
5	Concrete Paving Repair (if needed)	1	SY	\$120.00	\$120.00
					\$36,470.00

ASSUMPTIONS AND QUALIFICATIONS

This is based on the best available information at the time of this proposal as specified in the bid documents.

PROPOSAL INCLUSIONS

The prices stated in this proposal include:

- All labor and equipment to pipe burst existing pipe to HDPE
- All necessary traffic controls
- All SWPPP installation and management
- All 8" HDPE pipe material and fusion of HDPE pipe.
- All manhole bench or invert repair
- All service reconnects associated with pipe bursting line segments
- All manhole breakouts and manhole breakout patching around the new pipe installation.
- All bedding and backfill

PROPOSAL EXCLUSIONS

The prices stated in this proposal exclude:

- All Pre and Post Clean CCTV
- All permits and bonds (Bond is available for 2.5% addition to proposed value of contract items submitted herein.)
- All manhole rehabilitation and manhole stabilization involving piling.
- All new manholes
- Any traffic control, storm water pollution prevention and traffic control plans.

SPECIAL CONDITIONS

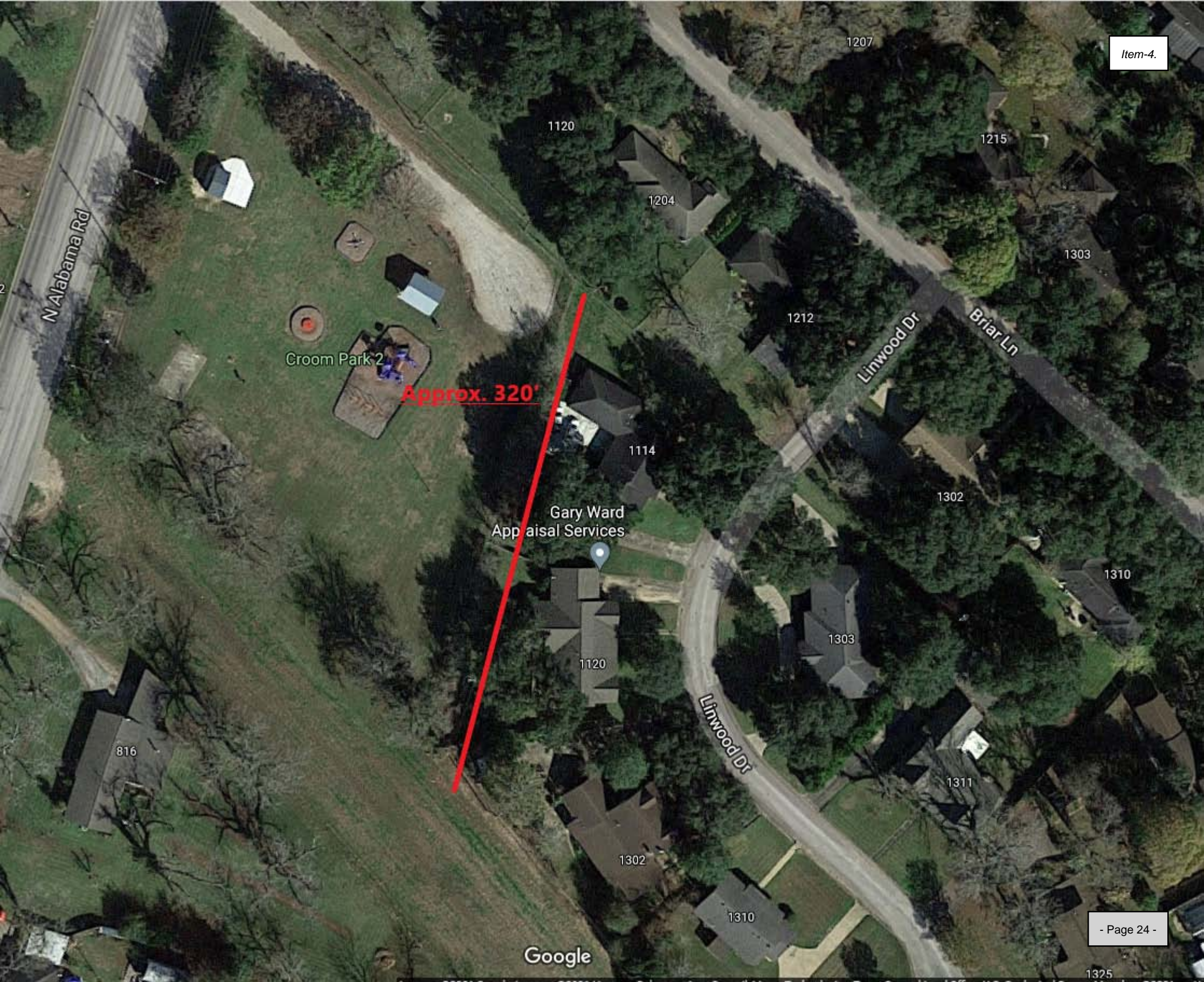
- Proposal Validity: This proposal is valid for 60 calendar days from the proposal date

- All other GENERAL TERMS AND CONDITIONS OF PROPOSAL are attached herein.

OFFERED BY

HORSESHOE CONSTRUCTION, INC

**ESTIMATOR
CHAD WALL**



Approx. 320'

Gary Ward
Appraisal Services

**CONSTRUCTION SERVICES AGREEMENT
WHARTON, TEXAS 77488**

**STATE OF TEXAS §
COUNTY OF WHARTON §**

This Agreement (hereinafter referred to as the “Agreement”, made and entered into in the City of Wharton, Wharton County, Texas, between the City of Wharton, a municipal corporation and political subdivision of the State of Texas, acting by and through its Mayor (hereinafter referred to as “City”), and _____ under the laws of the State of Texas (hereinafter referred to as “Contractor”), said Agreement being executed by the City through its Mayor and by said Contractor, for the 300’ sanitary sewer pipe bursting project at 1310 Linwood, Wharton, Texas 77488 (hereinafter referred to as the “Project”):

I. PURPOSE AND BRIEF STATEMENT OF PROJECT

- 1.1 Contractor, under this Agreement, is to provide all labor, materials and equipment necessary to conduct “Project” in accordance with the quote, which includes the plans and specifications attached hereto as Exhibit “A” at 1310 Linwood, Wharton, Texas.
- 1.2 Contractor shall commence work on the Project once the Contractor has been thoroughly briefed regarding the scope of the Project by City’s Representative and has been notified in writing by the City Manager to proceed with the Construction.

II. DESCRIPTION OF SERVICES AND CONTRACT DOCUMENTS

- 2.1 Contractor shall perform its obligations under this Agreement in accordance with the Contractor’s quote dated August 25, 2021 which comprises a list of services and price, which is attached hereto and fully incorporated verbatim for all purposes. Contractor will be compensated in accordance with Section 5.1 of this contract. Should there be any conflict between the terms of the Contractor’s Proposal, or any other Contract Documents, and terms of this Agreement, the terms of this Agreement shall be final and binding.

**III. VOLUME OF WORK / TERM PERIOD OF AGREEMENT / and
OPTIONAL RENEWAL PERIODS**

- 3.1 Contractor shall complete the work described in the Contract Documents and Exhibits “A” incorporated above..
- 3.2 The term of this Agreement shall commence immediately upon execution by both parties. The contractor will commence the work required by Exhibits “A” within ten (10) calendar days after the date of the Notice to

Proceed and will complete the same within _____ calendar days from the date of the notice to proceed.

- 3.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this Agreement, upon mutual agreement in writing, between the City Manager (or his designee) and Contractor, as to the reasonableness of said additional time or adjustment.
- 3.4 Both the City and the Contractor agree that additional services may be required for this Project based upon the potential duration of construction activities, potential extended working hours by the Contractor, and any additional testing required by the Owner and that this Agreement may be amended to increase the scope of work to include said additional services upon mutual agreement, and written notification of approval and understanding, from the City and the Contractor as to the reasonableness of the scope of work, period of service, and fees for any such additional services.

IV. COORDINATION WITH THE CITY

- 4.1 The City Manager or his designee, shall be the person to act as the City's representatives in connection with this Project. The Contractor shall hold periodic conferences with the City, or his representatives, through completion of the Project, in order to have the full benefit of their experience and knowledge of existing City needs and facilities, and to be consistent with regulatory policies and standards. To assist Contractor in this coordination, the City Manager shall make available to the Contractor other data in his possession relative to existing City facilities and to this particular Project, for Contractor's borrowed use in performing work associated with the terms of this Agreement. Contractor shall bear all costs associated with reproducing the required documents, and shall return all original documents loaned by the City to the City Manager immediately upon reproduction.
- 4.2 The City Manager will act on behalf of the City with respect to the work to be performed under this Agreement, in consultation with City's Representative. The City's Representative shall have complete authority to transmit instructions, receive information, interpret and define the Project Specifications and Contract Documents with respect to materials, equipment, elements, and systems pertinent to the Contractor's service.
- 4.3 The City's Representative will give written notice to Contractor whenever he/she reasonably believes work of Contractor to be defective or of any development that the City's Representatives reasonably believes may affect the scope or timing of Contractor's services. Contractor shall provide

written response to City's notice within ten (10) days of receipt of said notice. If Contractor fails to acknowledge City's notice, then such notices shall be deemed as acceptable to Contractor and therefore acknowledged and incorporated into Contractor services to be performed.

FEE SCHEDULE

- 5.1 For and in consideration of the services to be rendered by Contractor in this Agreement, the City shall pay the Contractor upon completion not to exceed \$24,920.00, without any further mutually agreed to and written amendments. Said payment shall be made within two (2) weeks from the date of the invoice to be provided by Contractor.
- 5.2 The City and Contractor acknowledge and agree that the total estimated fee amount as set forth in the Contract Documents shall not be exceeded and shall be the total remuneration to which Contractor may be entitled, inclusive of expenses, for the services described in Exhibit's "A".
- 5.3 For any additional services as may be agreed upon under the provision of Section III, Period of Service, of this Agreement, the City shall pay the Contractor any additional fee to be agreed upon in writing, predicated upon the proposed units of work for such additional services as may be authorized and approved by the City Manager and/or the City Council.

SECTION VI-RESERVED.

VII. REVISION TO SERVICES, AND REPORTS

- 7.1 Contractor shall make such revisions as may be required to meet the requirements of the City Manager.
- 7.2 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the City and Contractor, dated subsequent to the date hereof, and subject to City Council approval.
- 7.3 It is understood and agreed by the parties that changes in local, state, and federal rules, regulations, or laws applicable hereto, may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, as of the effective date of the regulation or law. Contractor expressly agrees to comply with all applicable federal, state, and local laws.

VIII. OWNERSHIP OF DOCUMENTS AND ACCESS TO LAB AND TEST RESULTS

- 8.1 Upon completion of the Project, all documents including any original estimates, reports, field notes and other data, will become the property of the City. It is understood that the City shall have free and immediate access to all such information with the right to make and retain copies of documents and data, whether or not the Project has been completed.
- 8.2 All reports, information and other data given to, prepared, or assembled by Contractor under this Agreement, and any other related documents or items shall become the sole property of the City and shall be delivered at no cost to the City upon request or termination of this Contract without restriction on future use related to the Project property. Contractor may make copies of any and all documents for its files, at its sole cost and expense.

IX. TERMINATION AND / OR SUSPENSION OF WORK

9.1 Right of Contractor to Terminate

- 9.1.1 Contractor may terminate this Agreement for substantial failure by the City to perform (through no fault of the Contractor) in accordance with the terms of this Agreement.
- 9.1.2 The Contractor must issue a signed, written notice of termination (citing this paragraph) to the City, which shall take effect thirty (30) days following the receipt of said notice.

9.2 Right of City to Terminate

- 9.2.1 This Agreement may be terminated by the City for any reason, with or without cause, upon written notice of termination to the Contractor (citing this paragraph). Such termination shall take effect upon the date specified in such notice; provided, however, that such date shall not be earlier than ten (10) days following the receipt by Contractor of said City notice. However, Contractor shall not perform, nor is entitled to compensation for, any unnecessary or unapproved work performed during time between the issuance of notice and the termination date.

9.3 Procedures Contractor to Follow Upon Receipt of Notice of Termination Issued by City.

- 9.3.1 Upon receipt of a notice of termination and prior to the effective date of the termination, Contractor shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

- 9.3.2 Upon the above conditions being met, and the City's review of the submissions and finding the claimed compensation to be in comportment with this Agreement, the City shall pay Contractor that portion of the agreed prescribed fee as set forth in Exhibit "B," as may be applicable, for yet uncompensated services actually performed to the benefit of the City under this Agreement, adjusted for any previous payment of the fees in question.
- 9.3.3 Failure by Contractor, within the time allotted, to comply with the submittal of the statement and documents as required above, for appropriate City review, shall waive the Contractor's rights to assert claims to collect monies under this Agreement. Time is of the essence in this regard.
- 9.4 Right of City to Suspend Giving Rise to Right of Contractor to Terminate
- 9.4.1 This Agreement may be suspended by the City for any reason, with or without cause upon the issuance of written notice of suspension (citing this paragraph). Such suspension shall take effect upon the date specified in such notice. The City suspension notice will outline the reasons for the suspension and the anticipated duration of the suspension, but such City suspension shall not exceed thirty (30) calendar days.
- 9.4.2 Contractor is hereby given the conditional right to terminate this Agreement in the event that the City suspends this Agreement for more than thirty (30) calendar days. Contractor may exercise this conditional right to terminate by issuing a written notice of termination (citing this paragraph) to the City at any time after the effective date of suspension. This termination shall only be effective after thirty (30) calendar days from receipt of said Suspension notice by the City.
- 9.5 Notice of Suspension Procedures
- 9.5.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Contractor shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.
- 9.5.2 Contractor shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

- 9.5.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Contractor until such time as Contractor may exercise the right to terminate.
- 9.5.4 During the period of Suspension, Contractor shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services that have actually been performed to the benefit of the City under this Agreement with adjustments for any previous payments of the fee in question.
- 9.5.5 In the event Contractor exercises its conditional right to terminate this Agreement at any time after the effective suspension date, Contractor shall submit, within thirty (30) days after receipt by City of Contractor's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of Suspension. Additionally, the above referenced copies of documents shall be delivered to the City as a precondition to final payment.
- 9.5.6 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this Agreement, the City shall pay Contractor that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.
- 9.5.7 Failure by Contractor to comply with the submittal of the statement and documents, in a timely manner, as required above shall waive Contractor's right to assert any claim to collect monies under this Agreement. Time is of the essence in this regard.

**X. EQUAL EMPLOYMENT OPPORTUNITY/WORKERS
COMPENSATION**

- 10.1 Contractor agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment without regard to their race, religion, national origin, gender, age, physically challenged condition, or political belief or affiliation.

XI. ASSIGNMENT OR TRANSFER OF INTEREST AND PERFORMANCE OBLIGATIONS

- 11.1 The Contractor shall not assign or transfer Contractor's interest in this Agreement, nor shall Contractor transfer its performance obligations under this Agreement, without the written consent of the City, as evidenced by the passage of a resolution by the City Council. Any unauthorized Contractor assignment shall be void.

XII. INSURANCE REQUIREMENTS

- 12.1 Prior to the commencement of any work under this Contract, Representative shall furnish an original completed Certificate(s) of Insurance (Exhibit "B") to the City Manager, which certificate(s) shall be clearly labeled with the name of the Project, and shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverages, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate(s) shall have been delivered to the City Manager. No officer or employee of City, other than the City Manager, shall have authority to waive this requirement.
- 12.2 The City reserves the right to review the insurance requirements of this Section during the effective period of the Agreement and any extension or renewal hereof and to modify at Contractor's partially reimbursable cost, insurance coverages and their limits when deemed necessary and prudent by the City Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Agreement, but in no instance will the City allow modification whereupon the City may incur increased risk.
- 12.3 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for the 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 the underwriter of any such policies). Upon request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the reimbursable cost thereof.
- 12.4 The Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain

in full force and effect for the duration of the Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and rated A or better by AM Best Company and/or otherwise acceptable to the City, in not less than the following types and amounts:

Type	Amount
A. <i>Workers Compensation</i>	Statutory Amount
<i>B. Commercial General (public) Liability Insurance to include coverage's for the following:</i>	
1. Premises Operations	Bodily Injury and Property Damage of \$100,000 per occurrence and at least \$200,000 aggregate
2. Independent Consultants	
3. Products/completed Operations	
4. Personal Injury	
5. ECU Coverage	
6. Contractual Liability	
7. Fire Legal Liability	
<i>C. Comprehensive Auto Liability</i>	
Type	Amount
1. Owned/Leased Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$100,000 per occurrence.
2. Non-Owned Vehicles	
3. Hired Vehicles	

12.5 Contractor agrees that with respect to the above-required insurance, all insurance, contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, agents, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured, performed under this Agreement with the City, with the exception of the professional liability and workers' compensations policies;
- The Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under the Agreement with the City;
- Workers' Compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

12.6 Contractor shall notify the City in the event of any notice of cancellation, non-renewal, or material change in coverage and shall give such notices not less than 30 days prior to the change, or thirty (30) days advance notice for any cancellation due to non-payment of premiums, which notice must be

accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

- 12.7 If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsements. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder, until Contractor demonstrates compliance with the requirements hereof.
- 12.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

XIII. INDEMNIFICATION

- 13.1 **CONTRACTOR** (which title is intended to include any and all professional entities and technical persons rendering services under this Agreement), whose work product is the subject of this Agreement for abatement services or other related technical services, agrees to **INDEMNIFY AND HOLD THE CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS** against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONTRACTOR'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, OR SUBCONTRACTOR OF CONTRACTOR AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights or duties under this Agreement. The

indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE FOR NEGLIGENCE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 13.2 CONTRACTOR shall promptly advise the CITY, in writing, of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this Agreement.
- 13.3 The provisions of this Section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XIV. INDEPENDENT CONTRACTOR

- 14.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions, and that the City shall in no way be responsible therefore, and that neither party hereto has the authority to bind the other or to hold out to third parties that it has the authority to bind the other. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as to creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar relationship between the parties hereto.

XV. INTEREST IN CITY CONTRACTS PROHIBITED

- 15.1 No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of land, materials, supplies, or service, except on behalf of the City as an officer or employee. Any willful violation of this policy shall constitute malfeasance in office and any officer or employee guilty thereof shall thereby forfeit his office or position. Any violation of this policy, with knowledge, expressed or implied, of the person or corporation contracting with the City shall render the Agreement voidable by the City Manager or the City Council. This prohibition extends to City Boards and Commissions other than those that are purely advisory.

XVI. NO PERSONAL LIABILITY

16.1 No elected official, director, officer, agent, or employee of the City, when acting within the course and scope of his or her respective official capacities, shall be charged personally or held contractually liable by or to Contractor under any term or provision of this Agreement, or because of any breach thereof, or because of its or his/her execution, approval, or attempted execution of the Agreement.

XVII. GOVERNING LAW

17.1 This Agreement, performance, and enforcement thereunder shall be construed in accordance with the laws of the State of Texas, to the exclusion of any other forums. Venue shall lie in Wharton County, Texas, wherein this Contract is performable.

XVIII. ENTIRE AGREEMENT

18.1 This Agreement, including the identified Exhibits (“A” and “B”) and attachment below, embody the final and entire agreement of the parties hereto, superseding all oral or written agreements, previous and/or contemporaneous. No other agreements, oral or otherwise, regarding the matters of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto, and be approved by the City Council, if said matters alter the scope or material provisions of this Agreement.

XIX. LEGAL AUTHORITY

19.1 The signer of this Agreement for Contractor, represents, warrants, assures, and guarantees that he / she has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all the terms, conditions, provisions, and obligations herein contained.

IN WITNESS WHEREOF, the City of Wharton has lawfully caused these presents to be executed by the hand of the Mayor and the said Contractor acting by the hand of Tim Barker thereunto authorized Mayor does now sign, execute and deliver this document.

Effective and executed this the _____ day of _____, 2021.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

By: _____

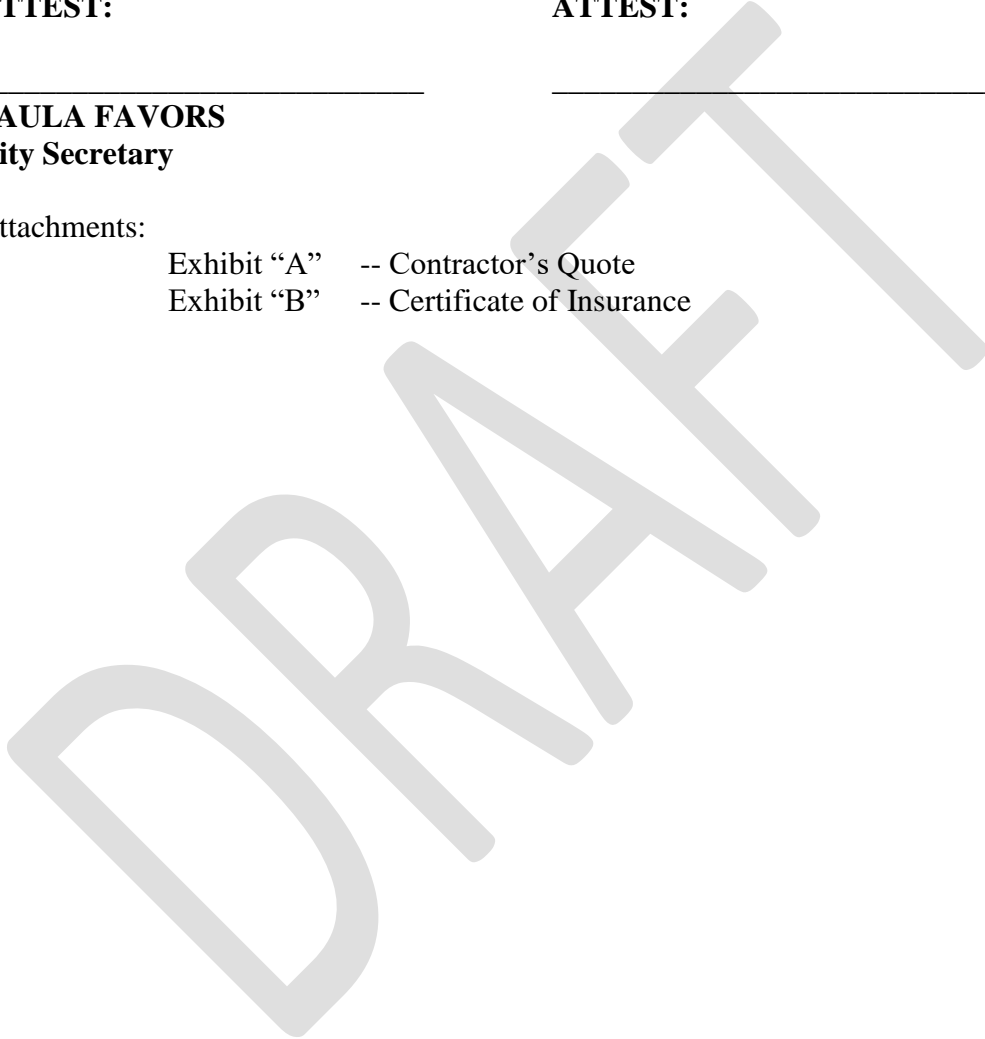
ATTEST:

PAULA FAVORS
City Secretary

ATTEST:

Attachments:

- Exhibit "A" -- Contractor's Quote
- Exhibit "B" -- Certificate of Insurance



ACKNOWLEDGMENTS

STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on this ____ day of _____ 2021, by
Tim Barker, Mayor on behalf of the City of Wharton, Texas.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on this ____ day of _____ 2021, by
_____ on behalf of _____.

Notary Public, State of Texas

Exhibit "A"

DRAFT

Exhibit "B"

DRAFT

**CITY OF WHARTON
RESOLUTION NO. 2021-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE REPLACEMENT OF THE SANITARY SEWER MAIN AT 1310 LINWOOD AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, The Wharton City Council wishes to enter into a contract for the replacement of the sanitary sewer main at 1310 Linwood with _____; and,

WHEREAS, The City of Wharton and _____ wishes to be bound by the conditions as set forth in the contract; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute a contract with _____ for the replacement of the sanitary sewer main at 1310 Linwood.

Section II. The City of Wharton and _____ are hereby bound by the conditions as set forth in the contract.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 13th day of September 2021.

CITY OF WHARTON, TEXAS


By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

PUBLIC WORKS COMMITTEE

Meeting Date:	9/13/2021	Agenda Item:	<p>Engineering Contracts for Utility Relocations for TxDOT I-69 Project:</p> <ul style="list-style-type: none"> A. Resolution: A resolution of the Wharton City Council authorizing a contract with Jones and Carter for engineering services for the US 59 Public Utility Relocation and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. B. Resolution: A resolution of the Wharton City Council authorizing a contract with Jones and Carter for engineering services for the WWTP No. 2 Major Amendment-Outfall Relocation Permit and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
<p>The City Staff has been in contact with TxDOT Engineers who are working on the I-69 expansion and have been made aware that there are utility relocations required due to the expansion.</p> <p>The City Staff has been working with Jones & Carter Inc., for the utility relocation design requirements and has also obtained quotes for the work to be completed. Attached are Draft contracts to authorize Jones and Carter Inc. to begin the engineering design for the relocation of water and sanitary lines that are currently placed along US 59 in the amount of \$478,000.00. The relocation of the utilities will also require the movement of the outfall for the WWTP No. 2 and will require a permit amendment with TCEQ.</p> <p>Attached is the Draft contract for the engineering services required for the application and coordination with TCEQ for the required amendment in the amount of \$38,000.00.</p> <p>The engineering and construction costs have been included in the application to the State Infrastructure Bank for funding.</p> <p>Community Development Director Gwyn Teves will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, September 9, 2021	
Approval: 			
Mayor: Tim Barker			



City of Wharton

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

MEMORANDUM

DATE: September 8, 2021
FROM: Gwyneth Teves, Community Development Director
TO: Mr. Joseph R. Pace, City Manager
SUBJECT: Engineering Contracts for Utility Relocations for TxDOT I-69 Project

The city staff has been in contact with TxDOT engineers who are working on the I-69 expansion and have been made aware that there are utility relocations required due to the expansion.

City staff has been working with Jones and Carter Inc. for the utility relocation design requirements and has also obtained quotes for the work to be completed. Attached are Draft contracts to authorize Jones and Carter Inc. to begin the engineering design for the relocation of water and sanitary lines that are currently placed along US 59 in the amount of \$478,000. The relocation of the utilities will also require the movement of the outfall for the WWTP#2 and will require a permit amendment with TCEQ. Attached is the Draft contract for the engineering services required for the application and coordination with TCEQ for the required amendment in the amount of \$38,000.

The engineering and construction costs have been included in the application to the State Infrastructure Bank for funding. It is my recommendation at this time to enter into the attached contracts with Jones & Carter for the above mentioned services.

If you should have any questions, please contact me at 979-532-2491 ext. 238. Thank You.

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 Jones & Carter, Inc., a Texas corporation and independent contractor, doing business in Texas ("Engineer"), acting herein by its duly authorized Director of Business Development, Matthew B. Breazeale, PE, 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: **US 59 Public Utility Relocations**

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 are estimated to be \$478,000 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 percent complete of lump sum tasks and hourly time spent on engineering work completed not to exceed amount of the Contract. If additional hours are needed to complete the task the engineer will notify the City and request authorization for the additional work. 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: Joseph R. Pace
City Manager
Telephone: (979) 532-4811
Facsimile: (979) 532-0181

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

Engineer

Jones & Cater, Inc.
2322 West Grand Parkway North, Suite 150
Katy, Texas 77449-7820
Attn: Matthew B. Breazeale, PE
Telephone 832.913.4000

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 binds 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.

EXECUTED in triplicate originals on this 7th day of September, 2021.

By: [Signature]
Name: Matthew B. Breazeale, P.E.
Title: Vice President

EXECUTED in triplicate originals on this _____ day of _____, 2021.

CITY OF WHARTON

ATTEST:

Name: Paula Favors
Title: City Secretary

By: _____
Name: Tim Barker
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on the ____ day of _____, 2020, by the Honorable TIM BARKER, Mayor of the CITY OF WHARTON, TEXAS.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF Harris §

This instrument was acknowledged before me on the 7 day of September, 2021, by Matthew Breazeale, of Jones + Carter Inc., a ~~an~~ Texas corporation on behalf of said corporation.

MBB



Melody R. Webb
Notary Public, State of Texas

EXHIBIT "A"

DESIGN AND CONSTRUCTION OBSERVATION SCOPE OF SERVICES FOR THE CITY OF WHARTON US 59 PUBLIC UTILITY RELOCATIONS.

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. The Project consists of preparation of plans to relocate public utilities in advance of construction of US 59 Improvements in Wharton, Texas. The US 59 project is approximately 8 miles in length from County Road 467 to SH 60. Utilities include CITY owned waterlines and sanitary sewer lines.

(1) Project Management

- a. Host kick off meeting
- b. QMP Plan
- c. Attend Monthly Utility Relocation Meetings
- d. Prepare and send monthly utility relocation updates

B. Basic Services of the Engineer:

(1) Survey Phase

- a. JC will perform a limited topographic survey of the existing utilities that require relocation from the Colorado River Bridge to Halford Road. This will be added to the survey information provided by Civil Corp.
- b. Survey will include all surface improvements and visible signs of underground utilities within the relocation limits including depth measurements on sanitary sewer manholes.

(2) Preliminary Engineering Phase:

- a. Utilize the topographic survey to determine limits of conflicts and required relocations. Based on the US 59 Project plans, anticipated conflicts to be designed or abandoned include:

Sanitary	Along westside of US 59 ROW starting 1000' south of FM 102 to FM 102
Sanitary	Along Northside of FM 102
Sanitary	Inside SB frontage road from FM 102 to Feeder Rd
Water	Along Eastside of US 59 ROW Starting at 0.55 miles north of FM 102 to Halford Rd.
Sanitary	Along Eastside of US 59 ROW Starting at 0.55 miles north of FM 102 to Feeder Rd. Cross from East to west ROW
FM Sanitary	Along Eastside of US 59 ROW Starting at Feeder Rd to Hinzes BBQ
Sanitary	Along Westside of US 59 ROW starting at Feeder Rd to Halford Rd.

- b. Perform field visit to verify site conditions depicted in topographic survey.
- c. Prepare Preliminary Design Documents: Prepare preliminary design documents and data showing the character and scope of the work to be performed by the contractors on the project and furnish said documents to the City for review and acceptance.

d. Preparation of Final Design Documents:

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.

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. Anticipated submittals include sending plans to the CITY and TCEQ for review and approval.

e. Construction Cost Estimate:

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.

- f. Furnish electronic copies of the above documents for review by the CITY.

(3) Bidding Phase:

a. Bid Phase Services:

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. Multiple iterations may be required based on federal requirements for bidders.

(4) Construction Phase:

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

- a. Coordinate and attend a pre-construction meeting with the Contractor and City.
- b. Consult with and advise CITY as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractors) (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 Contractors) 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 Contractors) 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 monthly 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; Engineer shall not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of work; Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractors) or the safety precautions and programs incident to the work of Contractor(s). Engineer's efforts will be directed toward providing assurance for CITY that the completed Project will

conform to the Contract Documents, but Engineer 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 Engineer 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; Engineer may, as CITY'S representative, require special inspection or testing of the work; Engineer shall act as interpreter of the requirements of the Contract Documents and judge of the performance there under 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 Engineer in good faith.

i. Based on Engineer's onsite observations and on 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 Engineer 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 Engineer 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.

(4) Field Project Representation:

a. Field project representation services generally consist of on-site project representative(s) to assist the ENGINEER and to provide more extensive observation of the Contractor's work. Presence of Field Project Representatives does not guarantee the contractor's work shall be free of defect, but is intended to improve the CLIENT's familiarity with the contractor's progress and quality of work. JC can provide different levels of observation to meet the CLIENT's needs. This proposal assumes daily field project visits every day during active construction for 3 hours a day. Field Project Representation services consist of the following:

1. Monitor and track quantities of work performed
2. Monitor and track Contractor's crews and equipment on-site
3. Validate impact-days daily
4. Match concrete batch tickets to placement locations
5. Prepare a daily summary of work observed

C. 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 CITY OF WHARTON US 59 PUBLIC UTILITY RELOCATIONS.

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 lump sum fee of \$384,000 and an estimated hourly fee of \$94,000 if the City chooses to utilize us for inspection services, with progress payments as herein provided.

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 Lump Sum amount of initial Basic Services Compensation, shall be set forth below.

<u>TASK</u>	<u>ESTIMATED COST</u>
A. Preliminary Design	\$76,000
B. Detailed Design.....	\$230,000
C. Construction Engineering Services.....	\$78,000
E. Field Project Representation(Hourly)	\$74,000
F. Additional Survey(Hourly)	\$20,000
Total Cost.....	\$478,000
G. Geotechnical Investigation (Cost + 10%)(If Requested).....	\$25,000

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.

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 Katy Office, Brian Geier, PE, Project Manager 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:

Matthew B. Breazeale, PE

EXHIBIT "B"
ATTACHMENT TWO
SCHEDULE OF PROJECTED REIMBURSABLE SERVICES



SCHEDULE OF HOURLY RATES

Effective January 2021 - Subject to Annual Revision in January 2022

ENGINEERING PERSONNEL

Design Engineer I	\$110
Design Engineer II	\$130
Professional Engineer I	\$150
Professional Engineer II	\$170
Professional Engineer III	\$195
Professional Engineer IV	\$225
Professional Engineer V	\$240
Practice Leader	\$260

ELECTRICAL ENGINEERING PERSONNEL

Electrical Design Engineer I	\$120
Electrical Design Engineer II	\$140
Electrical Professional Engineer I	\$165
Electrical Professional Engineer II	\$180
Electrical Professional Engineer III	\$200
Electrical Professional Engineer IV	\$235
Electrical Professional Engineer V	\$250

CONSTRUCTION PERSONNEL (Includes Mileage)

Construction Manager I	\$110
Construction Manager II	\$130
Construction Manager III	\$150
Construction Manager IV	\$170
Construction Manager V	\$195
Field Project Representative I	\$ 65
Field Project Representative II	\$ 90
Field Project Representative III	\$110
Specialist Field Project Representative I	\$120
Specialist Field Project Representative II	\$135
Senior Specialist Field Project Representative	\$150

SPECIALIST

Specialist I	\$100
Specialist II	\$125
Specialist III	\$195
Specialist IV	\$240

PLANNING PERSONNEL

Planner I	\$ 95
Planner II	\$125
Planner III	\$155
Planner Manager	\$225

DESIGNERS/DRAFTING PERSONNEL

CAD I	\$ 60
CAD II	\$ 85
CAD III	\$100
Designer I	\$100
Designer II	\$120
Designer III	\$140
GIS I	\$ 85
GIS II	\$110
GIS III	\$145
GIS IV	\$180

SURVEYING PERSONNEL

1-Person Field Crew	\$130
2-Person Field Crew	\$180
3-Person Field Crew	\$220
4-Person Field Crew	\$250
Scanner Equipment	\$100
Survey Technician I	\$ 85
Survey Technician II	\$ 95
Project Surveyor I	\$ 90
Project Surveyor II	\$105
Project Surveyor III	\$125
Project Surveyor IV	\$150
Chief of Survey Crews	\$110
Registered Professional Land Surveyor	\$170
Survey Manager	\$195

OFFICE PERSONNEL

Engineer's Assistant I	\$ 60
Engineer's Assistant II	\$ 75
Engineer's Assistant III	\$ 85
Admin I	\$ 60
Admin II	\$ 80
Admin III	\$105
Assistant Controller/ Chief Accountant	\$120
Corporate/Project Accountant	\$100

SCHEDULE OF REIMBURSABLE EXPENSES
 Effective January 2019
 Subject to Annual Revision in January 2021

1. Reproduction performed in office

<u>Size</u>	<u>Black & White</u>	<u>Color</u>
8½ x 11 (single-sided)	\$0.05/page	\$.50/page
8½ x 11 (double-sided)	\$0.15/page	\$ 1.00/page
8½ x 14	\$0.15/page	\$.75/page
11 x 17	\$0.20/page	\$ 1.00/page
 <u>Large Document Prints/Plots</u>		
	<u>Black & White</u>	<u>Color</u>
Bond	\$0.20/sq ft	\$ 1.00/sq ft
Photographic Bond	\$4.00/sq ft	\$ 5.00/sq ft
Mylar (4 mil)	\$2.00/sq ft	N/A

Aerial Backgrounds

All sizes \$5.00/sheet (plus above sq. ft. cost)

- 2. Transportation (mileage): Standard IRS mileage rate in effect
- 3. Subcontracts and all other outside expenses and fees: Cost, plus 10% service charge
- 4. Surveying Expenses
 - a. Crew Rates: Includes time charged portal to portal and the first 120 miles of transportation and standard survey equipment
 - b. Special Rental Equipment: Cost, plus 10%
 - c. Stakes: Cost, plus 10% service charge when an excessive number of wooden stakes or any special stakes are required
 - d. Iron Rods and Pipes: Cost, plus 10%
 - e. All-Terrain Vehicle (ATV): \$150/day
 - f. Overnight Stays: \$190/night
 - g. Overtime Rates: Jobs requiring work on weekends or holidays billed at 1.5 times the standard rate
 - h. Sales Tax: To be paid on boundary-related services.
 - i. Deliveries, abstracting services, outside reproduction costs, and other reimbursable expenses charged at cost, plus 10%

Final 2020
Standard

EXHIBIT "C"

PERFORMANCE SCHEDULE FOR ENGINEERING SERVICES ON THE CITY OF WHARTON US 59 PUBLIC UTILITY RELOCATIONS.

- I. Engineer understands that the Project Scope of Services outlined herein should be completed within four hundred seventy-four (474) calendar days. Engineer proposes to initiate the Project five (5) 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. This schedule is also directly dependent on the timeliness of TxDOT reviews.

Schedule

	<u>Duration</u>
Design Phase	92
Design & Plan Preparation	82
QAQC	10
Agency & Utility Reviews	104
1st Submittal to City of Wharton/TxDOT	27
Revisions to 1st Submittal Comments	14
2nd Submittal To City of Wharton/TxDOT	28
Revisions to 2nd Submittal Comments	7
Approvals	14
Submittal to AT&T & Centerpoint	28
AT&T & CenterPoint Signatures	14
Bidding & Construction	278
Advertise for Bid	14
Bid Opening	0
Award & Prepare Contracts	30
Pre-Construction Meeting	0
NTP Issued	10
Construction	210
Final Inspection & Acceptance	14

EXHIBIT "D"

**CITY'S DESIGNATED PROJECT REPRESENTATIVE FOR THE CITY
OF WHARTON US 59 PUBLIC UTILITY RELOCATIONS.**

- I. Anthony Arcidiacono(Primary)
- II. Gwyneth Teves(Secondary)

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 Jones & Carter, Inc., a Texas corporation and independent contractor, doing business in Texas ("Engineer"), acting herein by its duly authorized Director of Business Development, Matthew B. Breazeale, PE, 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: **WWTP No. 2 Major Amendment - Outfall Relocation Permit**

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 are estimated to be \$38,000 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 percent complete of lump sum tasks and hourly time spent on engineering work completed not to exceed amount of the Contract. If additional hours are needed to complete the task the engineer will notify the City and request authorization for the additional work. 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: Joseph R. Pace
City Manager
Telephone: (979) 532-4811
Facsimile: (979) 532-0181

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

Engineer

Jones & Cater, Inc.
2322 West Grand Parkway North, Suite 150
Katy, Texas 77449-7820
Attn: Matthew B. Breazeale, PE
Telephone 832.913.4000

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 binds 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.

EXECUTED in triplicate originals on this 7th day of September, 2021.

By: [Signature]
Name: Matthew B. Breazeale, PE.
Title: Vice President

EXECUTED in triplicate originals on this _____ day of _____, 2021.

CITY OF WHARTON

ATTEST:

Name: Paula Favors
Title: City Secretary

By: _____
Name: Tim Barker
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on the _____ day of _____, 2021, by the Honorable TIM BARKER, Mayor of the CITY OF WHARTON, TEXAS.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF Harris §

This instrument was acknowledged before me on the 7 day of September, 2021, by Matthew Breazeale, of Jones + Carter Inc., a TX Texas corporation on behalf of said corporation.

MWB



[Signature]
Notary Public, State of Texas

EXHIBIT "A"

DESIGN AND CONSTRUCTION OBSERVATION SCOPE OF SERVICES FOR THE CITY OF WHARTON WWTP NO. 2 MAJOR AMENDMENT - OUTFALL RELOCATION PERMIT.

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

Project Understanding

The City of Wharton (City) owns and operates a 0.50 MGD Wastewater Treatment Plant (WWTP), referred to as WWTP No. 2, that is located near the intersection of Feeder Road and US Route 59. The Wastewater Treatment Plant is permitted through the Texas Pollutant Discharge Elimination System (TPDES) by the Texas Commission on Environmental Quality (TCEQ) under Permit Number WQ0010381002, which expires on December 6, 2024.

JC understands the City intends to relocate the existing outfall location for WWTP No. 2, which will require a major amendment to the TPDES Permit. **Attachment A** in the proposal identifies the proposed effluent outfall location, for reference. The major amendment will include the following scope of service.

Scope of Work

- Permit Application
 - Complete the TPDES permit renewal application including Administrative Report 1.0, Administrative Report 1.1, Supplemental Permit Information Report, Technical Report 1.0, Technical Report 1.1, Core Data Form, Worksheet 2.0, and Worksheet 6.0.
 - Prepare exhibits including USGS Map, Flow Schematics, Supplemental Technical Reports, Affected Landowners, Buffer Zone Map, Sludge Management Plan, Regionalization, Area Water Wells Map, Wetlands Area Map, FEMA Floodplain Map, Windrose, Original Photographs, and Plant Site Map.
 - Coordinate with the Operator to have effluent sampled and analyzed. City Operator is responsible for payment of all services related to effluent testing, analysis, and testing results.
 - Submit all documents to the City for review and approval, following submission to the TCEQ.
- Permit Coordination
 - Respond to TCEQ regarding comments to deem the application administratively complete.
 - Review Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal, coordinate with newspaper publishers to publish the notice and deliver the completed application for public display.

- Respond to TCEQ regarding comments during the technical review process.
- Review and summarize the draft permit and respond to the TCEQ.
- Review Notice of Application and Preliminary Decision, coordinate with newspaper publishers to publish the notice and to have complete application placed on public display.
- Summarize the final permit requirements and distribute the final permit to the City.
- **Project Management**
 - Project Management to include invoicing, monthly email status updates, and maintenance of schedule through the estimated permit coordination period outlined in the project schedule.
- **Reimbursable Expenses**
 - Permit application renewal fees, advertising fees, reproduction costs, and delivery fees. **Effluent sampling and analysis costs will be managed and paid by the City.**

Deliverables

- Permit Application (Electronic version)
- Draft Permit with Summary (Electronic version)
- Amended TPDES Permit with Summary (Electronic version)

EXHIBIT "B"

COMPENSATION FOR ENGINEERING SERVICES FOR THE CITY OF WHARTON WWTP NO. 2 MAJOR AMENDMENT - OUTFALL RELOCATION PERMIT.

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 lump sum fee of \$32,000, estimated reimbursable expenses of \$6,000, and additional services of \$5,000 if the City chooses to utilize us for TCEQ Permit Coordination and project management past the anticipated permit period, with progress payments as herein provided.

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 Lump Sum amount of initial Basic Services Compensation, shall be set forth below.

<u>TASK</u>	<u>ESTIMATED COST</u>
A. Permit Application (Lump Sum).....	\$32,000
B. Reimbursable Expenses (Cost + 10%).....	\$6,000
Total Cost.....	\$38,000
C. Additional Services (Hourly as Requested).....	\$5,000

During the permitting process, various situations may arise that are outside of the services described above, and may necessitate additional services. These situations could include TCEQ required stream modeling, public comment or hearing request, additional studies, feasibilities, or cost analyses required by TCEQ, a contested permit, environmental or archaeological research request from TCEQ, or other non-standard issues requested by TCEQ. In any of these events, we can perform additional engineering services to assist with the permitting process for additional compensation. The need for these additional services are outside of JC's control. We will notify you of any necessary additional services, if any, prior to proceeding, including an estimated proposal for the additional effort.

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.

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 Katy Office, Michael P. Gurka, PE, Project Manager 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:

Matthew B. Breazeale, PE

EXHIBIT "B"
ATTACHMENT TWO
SCHEDULE OF PROJECTED REIMBURSABLE SERVICES

SCHEDULE OF HOURLY RATES

Effective January 2021 - Subject to Annual Revision in January 2022

ENGINEERING PERSONNEL

Design Engineer I	\$110
Design Engineer II	\$130
Professional Engineer I	\$150
Professional Engineer II	\$170
Professional Engineer III	\$195
Professional Engineer IV	\$225
Professional Engineer V	\$240
Practice Leader	\$260

ELECTRICAL ENGINEERING PERSONNEL

Electrical Design Engineer I	\$120
Electrical Design Engineer II	\$140
Electrical Professional Engineer I	\$165
Electrical Professional Engineer II	\$180
Electrical Professional Engineer III	\$200
Electrical Professional Engineer IV	\$235
Electrical Professional Engineer V	\$250

CONSTRUCTION PERSONNEL (Includes Mileage)

Construction Manager I	\$110
Construction Manager II	\$130
Construction Manager III	\$150
Construction Manager IV	\$170
Construction Manager V	\$195
Field Project Representative I	\$ 65
Field Project Representative II	\$ 90
Field Project Representative III	\$110
Specialist Field Project Representative I	\$120
Specialist Field Project Representative II	\$135
Senior Specialist Field Project Representative	\$150

SPECIALIST

Specialist I	\$100
Specialist II	\$125
Specialist III	\$195
Specialist IV	\$240

PLANNING PERSONNEL

Planner I	\$ 95
Planner II	\$125
Planner III	\$155
Planner Manager	\$225

DESIGNERS/DRAFTING PERSONNEL

CAD I	\$ 60
CAD II	\$ 85
CAD III	\$100
Designer I	\$100
Designer II	\$120
Designer III	\$140
GIS I	\$ 85
GIS II	\$110
GIS III	\$145
GIS IV	\$180

SURVEYING PERSONNEL

1-Person Field Crew	\$130
2-Person Field Crew	\$180
3-Person Field Crew	\$220
4-Person Field Crew	\$250
Scanner Equipment	\$100
Survey Technician I	\$ 85
Survey Technician II	\$ 95
Project Surveyor I	\$ 90
Project Surveyor II	\$105
Project Surveyor III	\$125
Project Surveyor IV	\$150
Chief of Survey Crews	\$110
Registered Professional Land Surveyor	\$170
Survey Manager	\$195

OFFICE PERSONNEL

Engineer's Assistant I	\$ 60
Engineer's Assistant II	\$ 75
Engineer's Assistant III	\$ 85
Admin I	\$ 60
Admin II	\$ 80
Admin III	\$105
Assistant Controller/ Chief Accountant	\$120
Corporate/Project Accountant	\$100



SCHEDULE OF REIMBURSABLE EXPENSES
Effective January 2019
Subject to Annual Revision in January 2021

1. Reproduction performed in office

Table with 3 columns: Size, Black & White, Color. Rows include 8 1/2 x 11 (single-sided), 8 1/2 x 11 (double-sided), 8 1/2 x 14, 11 x 17, Large Document Prints/Plots (Bond, Photographic Bond, Mylar (4 mil)).

Aerial Backgrounds

All sizes \$5.00/sheet (plus above sq. ft. cost)

- 2. Transportation (mileage): Standard IRS mileage rate in effect
3. Subcontracts and all other outside expenses and fees: Cost, plus 10% service charge
4. Surveying Expenses
a. Crew Rates: Includes time charged portal to portal and the first 120 miles of transportation and standard survey equipment
b. Special Rental Equipment: Cost, plus 10%
c. Stakes: Cost, plus 10% service charge when an excessive number of wooden stakes or any special stakes are required
d. Iron Rods and Pipes: Cost, plus 10%
e. All-Terrain Vehicle (ATV): \$150/day
f. Overnight Stays: \$190/night
g. Overtime Rates: Jobs requiring work on weekends or holidays billed at 1.5 times the standard rate
h. Sales Tax: To be paid on boundary-related services.
i. Deliveries, abstracting services, outside reproduction costs, and other reimbursable expenses charged at cost, plus 10%

Final 2020 Standard

EXHIBIT "C"

PERFORMANCE SCHEDULE FOR ENGINEERING SERVICES ON THE CITY OF WHARTON WWTP NO. 2 MAJOR AMENDMENT - OUTFALL RELOCATION PERMIT.

I. Engineer understands that the Project Scope of Services outlined herein should be completed within four hundred and sixty (460) calendar days. Engineer proposes to initiate the Project five (5) 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. This schedule is also directly dependent on the timeliness of TxDOT reviews.

Schedule

Submit Permit Application	130 calendar days
<u>Permit Coordination</u>	<u>330 calendar days*</u>
TOTAL DURATION	460 calendar days

*The 330-calendar days are outside JC's control, and the estimate is based on recent review times from the TCEQ on similar permit applications. If the TCEQ receives public comment, the permit is contested, or the TCEQ requires additional items, the schedule will be substantially delayed, and will be beyond JC's control. These would require a longer delivery and additional costs to complete.

EXHIBIT "D"

**CITY'S DESIGNATED PROJECT REPRESENTATIVE FOR THE CITY
OF WHARTON WWTP NO. 2 MAJOR AMENDMENT - OUTFALL
RELOCATION PERMIT.**

- I. Anthony Arcidiacono(Primary)
- II. Gwyneth Teves(Secondary)

**CITY OF WHARTON
RESOLUTION NO. 2021 - XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING A CONTRACT WITH JONES AND CARTER FOR ENGINEERING SERVICES FOR THE US 59 PUBLIC UTILITY RELOCATION AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, The Wharton City Council wishes to approve a contract between the City of Wharton and Jones and Carter Engineering for engineering services for the US 59 Public Utility Relocation; and,

WHEREAS, The City of Wharton and Jones and Carter Engineering wishes to be bound by the conditions as set forth in the agreement; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute the contract with Jones and Carter for engineering services for the US 59 Public Utility Relocation.

Section II. The City of Wharton and Jones and Carter are hereby bound by the conditions as set forth in the contract.

Section III. That this resolution shall become effective immediately upon its passage.

PASSED, APPROVED, and ADOPTED this 13th day of September 2021.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

**CITY OF WHARTON
RESOLUTION NO. 2021 - XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING A CONTRACT WITH JONES AND CARTER FOR ENGINEERING SERVICES FOR THE WWTP NO 2 MAJOR AMENDMENT – OUTFALL RELOCATION PERMIT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, The Wharton City Council wishes to approve a contract between the City of Wharton and Jones and Carter Engineering for engineering services for the WWTP No. 2 Major Amendment – Outfall Relocation Permit; and,

WHEREAS, The City of Wharton and Jones and Carter Engineering wishes to be bound by the conditions as set forth in the agreement; and,

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute the contract with Jones and Carter for engineering services for the WWTP No. 2 Major Amendment – Outfall Relocation Permit.

Section II. The City of Wharton and Jones and Carter are hereby bound by the conditions as set forth in the contract.

Section III. That this resolution shall become effective immediately upon its passage.

PASSED, APPROVED, and ADOPTED this 13th day of September 2021.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary


City of Wharton
120 E. Caney Street
Wharton, TX 77488

PUBLIC WORKS COMMITTEE

Meeting Date:	9/13/2021	Agenda Item:	Resolution: A resolution of the Wharton City Council approving a professional engineering services contract with Jones and Carter Engineering for the WWTP No. 1 Headworks Coarse Screen Replacement Project and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
---------------	-----------	--------------	--

Attached you will find the Professional Engineering Services Contract with Jones & Carter Engineering to design and to oversee the construction of the course screen replacement at WWTP#1.

Public Works Director Anthony Arcidiacono will be present to answer any questions.

City Manager: Joseph R. Pace	Date: Thursday, September 9, 2021
Approval: 	
Mayor: Tim Barker	



City of Wharton
Public Works Department
1005 E. Milam Street ° Wharton, TX 77488
Phone (979) 532-2491 ext. 801 ° Fax (979)
531-1744

MEMORANDUM

Date: September 8, 2021
To: Mr. Joseph R. Pace, City Manager
From: Anthony Arcidiacono, Public Works Director
Subject: WWTP#1 Headworks Course Screen Replacement

Attached please the Professional Engineering Services Contract for Jones & Carter to design and to oversee construction of the course screen replacement at WWTP#1. We decided to go back with the Catenary Bar Screen that the plant was originally designed with, this style of bar screen makes the most sense for our application.

I would like to place this on the City Council agenda for September 13, 2021

If you have any questions, please contact me at 979-532-2491 Ext. 800. Thank you.

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 Jones & Carter, Inc., a Texas corporation and independent contractor, doing business in Texas ("Engineer"), acting herein by its duly authorized Director of Business Development, Matthew B. Breazeale, PE, 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: **WWTP No. 1 Headworks Coarse Screen Replacement**

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 lump sum cost for Basic Services which are estimated to be \$101,000 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 percent complete of lump sum tasks and hourly time spent on engineering work completed not to exceed amount of the Contract. If additional hours are needed to complete the task the engineer will notify the City and request authorization for the additional work. 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: Mr. Joseph R. Pace
City Manager
Telephone: (979) 532-4811
Facsimile: (979) 532-0181

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

Engineer

Jones & Cater, Inc.
2322 West Grand Parkway North, Suite 150
Katy, Texas 77449-7820
Attn: Matthew B. Breazeale, PE
Telephone 832.913.4000

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 binds 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.

EXECUTED in triplicate originals on this 7th day of September, 2021.

By: [Signature]
Name: Matthew B. Breazale, PE
Title: Vice President

EXECUTED in triplicate originals on this _____ day of _____, 2021.

CITY OF WHARTON

ATTEST:

Name: Paula Favors
Title: City Secretary

By: _____
Name: Tim Barker
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on the _____ day of _____, 2021, by the Honorable TIM BARKER, Mayor of the CITY OF WHARTON, TEXAS.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF Harris §

This instrument was acknowledged before me on the 7 day of September, 2021, by Matthew Breazale, of Jones + Carter Inc., a ~~Texas corporation on behalf of said corporation.~~

MWB
11/25



[Signature]
Notary Public, State of Texas

EXHIBIT "A"

DESIGN AND CONSTRUCTION OBSERVATION SCOPE OF SERVICES FOR THE CITY OF WHARTON WWTP NO. 1 HEADWORKS COARSE SCREEN REPLACEMENT.

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

PROJECT UNDERSTANDING

JC understands that the client desires to replace the existing and non-functioning catenary mechanical screen at the headworks of Wastewater Treatment Plant (WWTP) No. 1 as outlined in the Class 3 Engineers Opinion of Probable Construction Cost (EOPCC) prepared by JC and dated June 14, 2021. The project is located in the City of Wharton and Wharton County.

The existing mechanical screen is in disrepair and is not functioning. The primary scope of work includes replacing the existing catenary mechanical coarse screen with a new catenary mechanical coarse screen. The existing mechanical screen and associated hardware will be demolished. The proposed equipment will be sized to accommodate the existing permitted peak flow of 4.07 million gallons per day (MGD). The opening size of the screen is currently proposed to be 0.25-inches, but should it be found that the hydraulics through the channel and upstream into the collection system is impacted, the screen size will be increased to a wider opening. No improvements will be made to convey the screening from the proposed mechanical screen. The screenings will discharge to a conveyance chute similar to how it operates today and will discharge by gravity into an existing roll-off dumpster adjacent to the screen. No improvements will be made to provide mechanical equipment to facilitate the removal of the screenings or dumpster from its current location.

The existing control panel and electrical conduit and conductors will be replaced with this scope of work. A new vendor supplied control panel will be installed with new instruments, hardware, conduit and conductors. A new ultrasonic level transducer will be installed in the upstream portion of the channel to automatically control the screen. Ancillary modifications including increasing the capacity of the auto-dialer and human-machine-interface (HMI) features will be including in this design.

The existing walls in the mechanical screen channel will receive up to 1/2 -inch repair mortar should it be required after a surface preparation of the walls, and a protective coating will be applied over the top of the existing walls. No bypassing is proposed with this project as it has been noted by the City Operator that all isolation gates are functioning and the mechanical screen channel will be taken out of service, with all flow being diverted to the manual screen channel.

No improvements are being made to the manual screen or any isolation gates in the existing headworks.

Based on our understanding, we developed the following scope of services and compensation for your consideration.

JONES|CARTER SCOPE OF SERVICES

- Design Phase Services
 - Provide project management during the design phase including managing project integration, scope schedule, cost, quality, staff resources, sub-consultants, and communications
 - JC will discuss the assignment with CLIENT; arrange for additional services and preliminary investigations including surveying.
 - Perform design calculations and prepare design report for submittal to TCEQ
 - Prepare conceptual drawings consisting of process and instrumentation diagrams, basic building floor plan and elevations, and site layouts
 - Prepare list of major equipment
 - Preparation of construction drawings using AUTOCAD 2D
 - Preparation of technical specifications based on JC standards
 - Preparation of a Class II Engineer's opinion of probable construction cost (EOPCC) prior to bidding
 - Preparation of front-end documents (based on the District's standard documents for bidding, Agreement, General and Supplemental Conditions)
 - Submit design package for entity review for approval (TCEQ, City of Wharton, Wharton County)
 - Facilitate the project bidding process including arranging advertisement of the project in a local newspaper as a reimbursable expense, post the bidding documents online via Civcast USA for review by prospective bidders, preparation of addenda to respond to questions to be distributed online via Civcast USA, facilitate a pre-bid meeting, facilitate a bid opening, prepare a bid tabulation, and prepare a Recommendation of Award.
- Construction Phase Services
 - Perform construction contract administration as defined in Exhibit A
- Additional Services
 - Field inspections during the design phase, to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by the CLIENT.
 - Prepare close out documents including final approved submittals, external agency correspondence including approval letters for construction and exceptions, and record drawings.
 - Perform an on-the-ground topographic survey to establish new vertical control, point shot elevation grid of topographic shots to establish existing ground elevations in the headworks area, inside the channel, and locations inside the collection system upstream for the first 4 manholes, locate visible improvement

- including fencing, pavement, structures, slabs, buildings, within the project area. Horizontal and vertical control will be based on the NAVD 88 Adjustment datum.
- Assist City in work observation as described in the attached Exhibit B-1 (Work Observation: Level I (Periodic Part-Time Representation for Major Activities); Provide up to 6 hours per week on average, including travel time, during active construction, estimated at 14 weeks, to observe construction activities and report on compliance, with respect to accepted construction methods and the contract documents, using Procore web-based document management system.
 - Attendance of up to one (1) equipment system start-ups.
 - Construction services beyond the Contractor's Contract Period of Performance are not included in the fee estimate and will only be charged as necessary (**No fee is included in the estimate for this item. This will only be done if needed based on Contractor performance.**)
- Reimbursable Expenses
 - Provide project advertising and reproduction of 2 sets of contract documents and record drawings for the client, and construction documents more than five sets during Construction.
 - Plan review fees, advertising fees, delivery fees, and other services not performed by JC.
 - List of Deliverables
 - Digital copies (PDFs) of each TCEQ submittal item noted in the scope above
 - One (1) digital (PDF) copy of bid set drawings, technical specifications, and bidding documents
 - One (1) digital (PDF) copy of conformed contract documents
 - Two (2) original sets of conformed contract documents printed on bond paper (1 for the City, and 1 for Contractor)
 - Digital copies (PDFs) of addenda
 - One (1) digital (PDF) copy of a recommendation of award
 - One (1) digital (PDF) copy of certificate of substantial completion
 - Two (2) original sets of the certificate of substantial completion (1 for the District, and 1 for Contractor)
 - One (1) digital (PDF) copy of contractor punch list
 - One (1) digital (PDF) copy of record drawings
 - Supplemental Services – These services are not included in this fee proposal, but the Client may want or need these during the project. These services can be performed for an additional fee.
 - Provide geotechnical investigations or construction materials testing
 - Provide environmental investigations, permitting, mitigation, remediation, or stormwater detention/water quality pond design services.
 - Provide value engineering after completion of the design phase.
 - Coordinate with and /or address comments by independent reviewers.
 - Provide bid phase services to re-bid the project.
 - Provide services if additional or extended services are made necessary by work damaged by fire or other cause during construction, defective or neglected work of contractor; prolongation of construction contract time beyond the 210 calendar

days noted in the project schedule, acceleration of work schedule involving services beyond normal working hours; or default under construction contract due to delinquency or insolvency.

- Assistance with post-construction warranty work.
- Construction management

EXHIBIT "B"

COMPENSATION FOR ENGINEERING SERVICES FOR THE CITY OF WHARTON WWTP NO. 1 HEADWORKS COARSE SCREEN REPLACEMENT.

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 lump sum fee of \$101,000, estimated reimbursable expenses of \$8,250, and additional services of \$23,000 if the City chooses to utilize us for TCEQ Permit Coordination and project management past the anticipated permit period, with progress payments as herein provided.

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 Lump Sum amount of initial Basic Services Compensation, shall be set forth below.

<u>TASK</u>	<u>ESTIMATED COST</u>
A. Surveying Phase Services (Lump Sum)	\$6,000
B. Design Phase Services (Lump Sum).....	\$85,000
C. Construction Phase Services (Lump Sum).....	\$10,000
Total Cost.....	\$101,000
D. Reimbursable Expenses (Cost + 10%).....	\$8,250
E. Additional Services (Hourly as Requested).....	\$23,000

During the permitting process, various situations may arise that are outside of the services described above, and may necessitate additional services. These situations could include TCEQ required stream modeling, public comment or hearing request, additional studies, feasibilities, or cost analyses required by TCEQ, a contested permit, environmental or archaeological research request from TCEQ, or other non-standard issues requested by TCEQ. In any of these events, we can perform additional engineering services to assist with the permitting process for additional compensation. The need for these additional services are outside of JC's control. We will notify you of any necessary additional services, if any, prior to proceeding, including an estimated proposal for the additional effort.

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.

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 Katy Office, K. Grady Turner III, PE, Project Manager 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:

Matthew B. Breazeale, PE

EXHIBIT "B"
ATTACHMENT TWO
SCHEDULE OF PROJECTED REIMBURSABLE SERVICES



SCHEDULE OF HOURLY RATES

Effective January 2021 - Subject to Annual Revision in January 2022

ENGINEERING PERSONNEL

Design Engineer I	\$110
Design Engineer II	\$130
Professional Engineer I	\$150
Professional Engineer II	\$170
Professional Engineer III	\$195
Professional Engineer IV	\$225
Professional Engineer V	\$240
Practice Leader	\$260

ELECTRICAL ENGINEERING PERSONNEL

Electrical Design Engineer I	\$120
Electrical Design Engineer II	\$140
Electrical Professional Engineer I	\$165
Electrical Professional Engineer II	\$180
Electrical Professional Engineer III	\$200
Electrical Professional Engineer IV	\$235
Electrical Professional Engineer V	\$250

CONSTRUCTION PERSONNEL (Includes Mileage)

Construction Manager I	\$110
Construction Manager II	\$130
Construction Manager III	\$150
Construction Manager IV	\$170
Construction Manager V	\$195
Field Project Representative I	\$ 65
Field Project Representative II	\$ 90
Field Project Representative III	\$110
Specialist Field Project Representative I	\$120
Specialist Field Project Representative II	\$135
Senior Specialist Field Project Representative	\$150

SPECIALIST

Specialist I	\$100
Specialist II	\$125
Specialist III	\$195
Specialist IV	\$240

PLANNING PERSONNEL

Planner I	\$ 95
Planner II	\$125
Planner III	\$155
Planner Manager	\$225

DESIGNERS/DRAFTING PERSONNEL

CAD I	\$ 60
CAD II	\$ 85
CAD III	\$100
Designer I	\$100
Designer II	\$120
Designer III	\$140
GIS I	\$ 85
GIS II	\$110
GIS III	\$145
GIS IV	\$180

SURVEYING PERSONNEL

1-Person Field Crew	\$130
2-Person Field Crew	\$180
3-Person Field Crew	\$220
4-Person Field Crew	\$250
Scanner Equipment	\$100
Survey Technician I	\$ 85
Survey Technician II	\$ 95
Project Surveyor I	\$ 90
Project Surveyor II	\$105
Project Surveyor III	\$125
Project Surveyor IV	\$150
Chief of Survey Crews	\$110
Registered Professional Land Surveyor	\$170
Survey Manager	\$195

OFFICE PERSONNEL

Engineer's Assistant I	\$ 60
Engineer's Assistant II	\$ 75
Engineer's Assistant III	\$ 85
Admin I	\$ 60
Admin II	\$ 80
Admin III	\$105
Assistant Controller/ Chief Accountant	\$120
Corporate/Project Accountant	\$100

SCHEDULE OF REIMBURSABLE EXPENSES
 Effective January 2019
 Subject to Annual Revision in January 2021

1. Reproduction performed in office

<u>Size</u>	<u>Black & White</u>	<u>Color</u>
8½ x 11 (single-sided)	\$0.05/page	\$.50/page
8½ x 11 (double-sided)	\$0.15/page	\$ 1.00/page
8½ x 14	\$0.15/page	\$.75/page
11 x 17	\$0.20/page	\$ 1.00/page
 <u>Large Document Prints/Plots</u>		
	<u>Black & White</u>	<u>Color</u>
Bond	\$0.20/sq ft	\$ 1.00/sq ft
Photographic Bond	\$4.00/sq ft	\$ 5.00/sq ft
Mylar (4 mil)	\$2.00/sq ft	N/A

Aerial Backgrounds

All sizes \$5.00/sheet (plus above sq. ft. cost)

- 2. Transportation (mileage): Standard IRS mileage rate in effect
- 3. Subcontracts and all other outside expenses and fees: Cost, plus 10% service charge
- 4. Surveying Expenses
 - a. Crew Rates: Includes time charged portal to portal and the first 120 miles of transportation and standard survey equipment
 - b. Special Rental Equipment: Cost, plus 10%
 - c. Stakes: Cost, plus 10% service charge when an excessive number of wooden stakes or any special stakes are required
 - d. Iron Rods and Pipes: Cost, plus 10%
 - e. All-Terrain Vehicle (ATV): \$150/day
 - f. Overnight Stays: \$190/night
 - g. Overtime Rates: Jobs requiring work on weekends or holidays billed at 1.5 times the standard rate
 - h. Sales Tax: To be paid on boundary-related services.
 - i. Deliveries, abstracting services, outside reproduction costs, and other reimbursable expenses charged at cost, plus 10%

Final 2020
Standard

EXHIBIT "C"

PERFORMANCE SCHEDULE FOR ENGINEERING SERVICES ON THE CITY OF WHARTON WWTP NO. 1 HEADWORKS COARSE SCREEN REPLACEMENT.

- I. Engineer understands that the Project Scope of Services outlined herein should be completed within five hundred and ten (510) calendar days. Engineer proposes to initiate the Project five (5) 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.

Schedule

Design Phase:	180	calendar days
Regulatory Reviews*	60	calendar days
Bidding Phase:	60	calendar days
Construction Phase**:	210	calendar days
TOTAL DURATION	510	calendar days

*If the TCEQ requires a detailed review of the plans, specifications, and design report, the review schedule will be delayed approximately 60 calendar days. This is outside of JC's control and is unknown whether the TCEQ will require this.

**We recommend that the construction time be a requirement of submittal by the Contractor to allow as basis of award. Actual construction contract time may vary from this amount. Our proposal and fees are based on the duration listed.

EXHIBIT "D"

**CITY'S DESIGNATED PROJECT REPRESENTATIVE FOR THE CITY
OF WHARTON WWTP NO. 1 HEADWORKS COARSE SCREEN
REPLACEMENT.**

- I. Anthony Arcidiacono(Primary)
- II. Gwyneth Teves(Secondary)

**CITY OF WHARTON
RESOLUTION NO. 2021-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A PROFESSIONAL ENGINEERING SERVICES CONTRACT WITH JONES AND CARTER ENGINEERING FOR THE WWTP NO. 1 HEADWORKS COARSE SCREEN REPLACEMENT PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.

WHEREAS, The Wharton City Council wishes to approve a professional engineering services contract between the City of Wharton and Jones and Carter Engineering for the WWTP No. 1 Headworks Coarse Screen Replacement Project; and,

WHEREAS, The City of Wharton and Jones and Carter Engineering wishes to be bound by the conditions as set forth in the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The Wharton City Council hereby approves a professional engineering services contract between the City of Wharton and Jones and Carter Engineering for the WWTP No. 1 Headworks Coarse Screen Replacement Project.

Section II. The Wharton City Council hereby approves to authorize the Mayor of the City of Wharton to execute the agreement.

Section III. The City of Wharton and Jones and Carter Engineering are hereby bound by the conditions as set forth in the agreement.

Section IV. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this the 13th day of September 2021.

CITY OF WHARTON

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary