



**CITY OF WHARTON
PUBLIC WORKS COMMITTEE MEETING**

**Monday, April 12, 2021
6:15 PM**


CITY HALL

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

Notice is hereby given that a Public Works Committee Meeting will be held on Monday, April 12, 2021 at 6:15 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 8th day of April 2021.


By: 
Andres Garza, Jr., City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the 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 April 8, 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. **BRILLE IS NOT AVAILABLE.**

Dated this 8th day of April 2021.

CITY OF WHARTON

By: 
Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
Public Works Committee Meeting
Monday, April 12, 2021
City Hall - 6:15 PM

Call to Order.

Roll Call.

Public Comments.

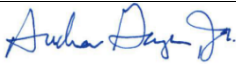
Review & Consider:

1. Minutes from the meeting held February 8, 2021.
2. Alabama Street Water Well No. 3 Rehab 2021:
 - A. Resolution: A resolution of the Wharton City Council authorizing and ratifying the Professional Engineering Services Contract with Jones & Carter, Inc., for the Alabama Street Water Well No. 3 Rehab 2021 and authorizing the Mayor of the City of Wharton to execute all documents related to said ratification.
 - B. Bid Tabulations.
 - C. Resolution: A resolution of the Wharton City Council awarding a contract for the Alabama Street Water Well No. 3 Rehab 2021 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:	4/12/2021	Agenda Item:	Minutes from the meeting held February 8, 2021.
Attached are the draft minutes from the meeting held February 8, 2021.			
City Manager: Andres Garza, Jr.		Date: Thursday, April 8, 2021	
Approval: 			
Mayor: Tim Barker			

**MINUTES
OF
CITY OF WHARTON
PUBLIC WORKS COMMITTEE MEETING
City Hall, 120 East Caney Street, Wharton, Texas
Monday, February 8, 2020 6:30 p.m.**

City Manager Andres Garza, Jr., declared a meeting of the City Council Public Works Committee duly open for the transaction of business at 6:30 p.m.

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

Committee Member absent: None.

Staff Members present: City Manager Andres Garza, Jr., Community Development Director Gwyneth Teves and Finance Director Joan Anandel.

Staff Members absent: Assistant to the City Manager Brandi Jimenez

Visitors present: None.

Public comments. There were no public comments.

The first item on the agenda was to review and consider minutes from the meeting held December 14, 2020. Councilmember Don Mueller made a motion to approve the minutes as presented. Councilmember Clifford Jackson seconded. All voted in favor.


The second item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council awarding a contract for engineering services for the Texas Community Development Block Grant-Downtown Revitalization Program/Main Street (TxCDBG-DRP/MS) Grant Programs administered by the Texas Department of Agriculture (TDA) and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. Community Development Director Gwyn Teves stated to the Committee that the City Council had approved the establishment of a Consultant Selection Committee and authorized the City Staff to go out for engineering services for the TxCDBG-DRP/MS grant programs administered by the TDA on December 14, 2020. She stated that statement of qualifications were received at City Hall on January 20, 2021 at 10:30 a.m. The Committee scored and ranked the statement of qualifications. After some discussion, Councilmember Terry Freese made a motion to recommend to the City Council to award a contract to the highest ranked firm, KSA, for engineering services for the Texas Community Development Block Grant-Downtown Revitalization Program/Main Street (TxCDBG-DRP/MS) Grant Programs administered by the Texas Department of Agriculture (TDA). Councilmember Don Mueller seconded. All voted in favor.

The third item on the agenda was adjournment. Councilmember Don Mueller moved to adjourn. Councilmember Terry Freese seconded. All voted in favor. The meeting adjourned at 6:35 p.m.

Andres Garza, Jr. City Manager

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

PUBLIC WORKS COMMITTEE

Meeting Date:	4/12/2021	Agenda Item:	Alabama Street Water Well No. 3 Rehab 2021: <ul style="list-style-type: none"> A. Resolution: A resolution of the Wharton City Council authorizing and ratifying the Professional Engineering Services Contract with Jones & Carter, Inc., for the Alabama Street Water Well No. 3 Rehab 2021 and authorizing the Mayor of the City of Wharton to execute all documents related to said ratification. B. Bid Tabulations. C. Resolution: A resolution of the Wharton City Council awarding a contract for the Alabama Street Water Well No. 3 Rehab 2021 and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.
<p>Attached you will find a memo to me from Interim Public Works Director Amy Horelica regarding the Alabama Street Water Well No. 3 Rehab 2021. The well started experiencing some issues and was noted. The well was tested for performance in January of 2021 and there has been a drop in production. The well was recently tested again and brass shavings were detected indicating wear within the pump bowl. The well has since be taken offline.</p> <p>Also attached is the engineering contract from Jones & Carter on the rehabilitation of the Alabama Street Water Well No. 3. that have been signed by Mayor Barker prior to this meeting. The engineering work had to begin in order to get the necessary quotes for City Council consideration. The bid tabulation will be presented at the meeting.</p> <p>Jones & Carter will be present to answer any questions.</p>			
City Manager: Andres Garza, Jr.		Date: Thursday, April 8, 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: April 6 2021
To: Andres Garza, Jr., City Manager
From: Amy Horelica, Interim Public Works Director
Subject: Alabama Street Water Well No. 3 Rehab 2021

Attached please find the engineering contract from Jones|Carter on the rehabilitation of the Alabama Street Water Well No. 3. The well started experiencing some issues and was noted since the well was tested for performance in January of 2021 there has been a drop in production. The well was recently tested again and brass shavings were detected indicating wear within the pump bowl. The well has since be taken offline.

Jones|Carter have solicited contract documents and specification packages to Alsay, C-C and Layne and proposals are due April 9, 2021 by 9a.m.

Please place this on the City Council agenda for April 12, 2021 for ratification.

If you have any questions, please contact me at 979-532-2491 Ext. 801. 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: **Alabama Street Water Well No. 3 Rehab 2021**

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

1. Scope of Services

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

2. Compensation

CITY will pay Engineer for the technical and professional services described in Exhibit "A" in accordance with the Performance Schedule as outlined Exhibit "C," and for a cost reimbursable, initial total amount of Basic Services Compensation which shall be an hourly not to exceed amount of \$34,000 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 with hourly time spent on engineering work completed up to the hourly 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 POLCIES AND LIMITS, THEN THE ENGINEER'S TOTAL

LIABILITY FOR ANY LOSS SHALL NOT EXCEED ONE MILLION DOLLARS. CITY HEREBY RELEASES ENGINEER FROM ANY LIABILITY EXCEEDING SUCH AMOUNTS.

8 Addresses for Notices and Communications

CITY

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

NOTE.

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

Engineer

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 1 day of April, 2021.

By: [Signature]
Name: Matt Brazzale
Title: Vice President

EXECUTED in triplicate originals on this 10 day of April, 2021.

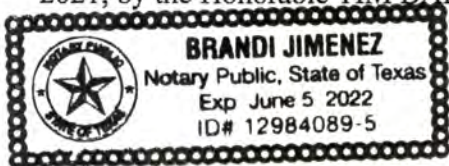
CITY OF WHARTON

ATTEST:
[Signature]
Name: Paula Favors
Title: City Secretary

By: [Signature]
Name: Tim Barker
Title: Mayor

THE STATE OF TEXAS §
COUNTY OF WHARTON §

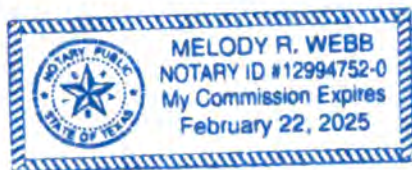
This instrument was acknowledged before me on the 10th day of April, 2021, by the Honorable TIM BARKER, Mayor of the CITY OF WHARTON, TEXAS



[Signature]
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF Harris §

This instrument was acknowledged before me on the 1 day of April, 2021, by Matt Brazzale, of Jones + Carter, Inc., a Texas corporation on behalf of said corporation



[Signature]
Notary Public, State of Texas

EXHIBIT "A"

DESIGN AND CONSTRUCTION OBSERVATION SCOPE OF SERVICES FOR THE CITY OF WHARTON ALABAMA STREET WELL NO. 3 REHAB 2021

- 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 submission of the Project, and shall give consultation and advice to the CITY during the performance of his Services. The Project consists of completion of an emergency water well rework design, solicitation, and construction oversight.
- B. Scope of Services:
- a. Updating the water well profile drawing
 - b. Collection and analysis of the existing performance data.
 - c. Design and preparation of any necessary details.
 - d. Preparation of technical specifications and contract documents.
 - e. Respond to questions during the solicitation process and the preparation of any necessary addenda
 - f. Review of bids, tabulation, and issuance of a recommendation for award.
 - g. Review of shop drawings and submittals
 - h. Review of television surveys and recommendations based on their content
 - i. Attend shop inspections
 - j. Design and selection of replacement pump.
 - k. Review of progress payment requests and change orders
 - l. Respond to questions
 - m. On-call field project representation to assist the City Inspector as needed.
 - n. Final inspection and preparation of punch list.
 - o. Review of Operation and Maintenance Manuals.
- 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 ALABAMA STREET WELL NO. 3 REHAB 2021

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, an hourly not to exceed amount of \$45,500, 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 hourly rate schedule shown in Exhibit "B" Attachment Two with a not to exceed amount shown below.

<u>TASK</u>	<u>ESTIMATED COST</u>
A Design Phase	\$7,500 00
B Solicitation Phase	\$2,500.00
C Construction Phase	\$11,000 00
D Additional Engineering Services	\$4,000.00
E Field Project Representation	\$8,000 00
F Reimbursable Expenses	<u>\$1,000.00</u>
Estimated Hourly Fee	\$34,000.00

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 Bellaire Office, Stephanie S Kaspar, 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 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 ALABAMA STREET WELL
NO. 3 REHAB 2021**

- I. **Engineer understands that the Project Scope of Services outlined herein should be completed within one hundred and thirty three (133) 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	14 calendar days
Solicitation Phase	14 calendar days
Construction Phase	75 calendar days
Project Close Out & O&M’s	30 calendar days*
TOTAL DURATION	133 calendar days

EXHIBIT "D"

**CITY'S DESIGNATED PROJECT REPRESENTATIVE FOR THE CITY
OF WHARTON ALABAMA STREET WELL NO. 3 REHAB 2021**

I. Amy Horelica

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

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING AND RATIFYING THE PROFESSIONAL ENGINEERING SERVICES CONTRACT WITH JONES & CARTER, INC., FOR THE ALABAMA STREET WATER WELL NO. 3 REHAB 2021 AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID RATIFICATION.

WHEREAS, The Alabama Street Water Well No. 3 started experiencing some issues after the well was tested for performance in January of 2021; and,

WHEREAS, The test showed that there had been a drop in production; and,

WHEREAS, The City of Wharton had to take the Alabama Street Water Well No. 3 offline; and,

WHEREAS, The Wharton City Council ratifies the Professional Engineering Services Contract with Jones & Carter, Inc., for the Alabama Street Water Well No. 3 Rehab and wishes to authorize the Mayor of the City of Wharton to execute all documents.

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 all documents related to the Professional Engineering Services Contract with Jones & Carter, Inc., for the Alabama Street Water Well No. 3 Rehab.

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

Passed, Approved, and Adopted this 12th day of April 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 AWARDDING A CONTRACT FOR THE ALABAMA STREET WATER WELL NO. 3 REHAB 2021 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 Alabama Street Water Well No. 3 Rehab 2021 with _____; and,

WHEREAS, The City of Wharton and _____ 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 an agreement with _____ for the Alabama Street Water Well No. 3 Rehab 2021.

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 12th day of April 2021.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary