



**CITY OF WHARTON  
PUBLIC WORKS COMMITTEE MEETING**

**Monday, July 26, 2021  
5:30 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, July 26, 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 22nd day of July 2021.

By: Joseph R. Pace  
Joseph R. Pace, 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 July 22, 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 22nd day of July 2021.

**CITY OF WHARTON**

By: Paula Favors  
Paula Favors  
City Secretary



**A G E N D A**  
**CITY OF WHARTON**  
**Public Works Committee Meeting**  
**Monday, July 26, 2021**  
**City Hall - 5:30 PM**

**Call to Order.**

**Roll Call.**

**Public Comments.**


**Review & Consider:**

1. Minutes from the meeting held July 19, 2021.
2. City of Wharton 2020 Street Improvement Project:
  - A. Request for Change Order No. 4 to the 2020 Street Improvement Project.
3. Resolution: 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.
4. Resolution: 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.

**Adjournment.**

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

# PUBLIC WORKS COMMITTEE

Meeting Date:	7/26/2021	Agenda Item:	Minutes from the meeting held July 19, 2021.
Attached are the draft minutes from the meeting held July 19, 2021.			
City Manager: Joseph R. Pace		Date: Thursday, July 22, 2021	
Approval: 			
Mayor: Tim Barker			

**MINUTES  
OF  
CITY OF WHARTON  
PUBLIC WORKS COMMITTEE MEETING  
City Hall, 120 East Caney Street, Wharton, Texas  
Monday, July 19, 2020 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 5:35 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; City Secretary, Paula Favors; Community Development Director, Gwyn Teves and Public Works Director, Anthony Arcidiacono.

Staff Members absent: None.

Visitors present: Mayor, Tim Barker; Councilmember, Steven Schneider and Councilmember, Alice Heard-Roberts.

Public comments. There were no public comments.

The first item on the agenda was to review and consider minutes from the meeting held July 12, 2021. Councilmember, Don Mueller, made a motion to approve the minutes as presented. Councilmember, Terry Freese, seconded the motion. All voted in favor.

The second item on the agenda was to review and consider Update on the City of Wharton 2020 Street Improvement Project. The City Staff made a presentation to the Committee regarding the City of Wharton 2020 Street Improvement Project. After some discussion, Councilmember, Don Mueller, made a motion to recommend to the City Council to extend the contract. Councilmember, Clifford Jackson, seconded the motion. All voted in favor.


The third item on the agenda was adjournment. Councilmember, Don Mueller, moved to adjourn. Councilmember, Clifford Jackson, seconded. All voted in favor. The meeting adjourned at 6:50 p.m.

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Joseph R. Pace, City Manager

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

## PUBLIC WORKS COMMITTEE

Meeting Date:	7/26/2021	Agenda Item:	City of Wharton 2020 Street Improvement Project: A. Request for Change Order No. 4 to the 2020 Street Improvement Project.
<p>Attached you will find Change Order No. 4 to the contract for the 2020 Street Improvement Project. The Change Order would extend the contract completion date to complete the May 3, 2021 punch list and to remove remaining unfinished streets, parking lots and striping from the contract.</p> <p>BEFCO Engineering will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, July 22, 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:** July 20, 2021  
**To:** Mr. Joseph R. Pace, City Manager  
**From:** Anthony Arcidiacono, Public Works Director  
**Subject:** Change Order No. 4 – Street Improvement Project

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Attached please find change order #4 for the 2020 Street Improvement Program to extend the contract completion date to August 31, 2021 to complete punch list put together by BEFCO Engineering and omit the remaining streets and parking lots from the project.

I would like to place this on the City Council agenda for July 26, 2021

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

**Change Order****No. 4**Date of Issuance: July 21, 2021

Effective Date: \_\_\_\_\_

Project: 2020 Street Program Improvements	Owner: City of Wharton	Owner's Contract No.:
Contract:		Date of Contract: August 6, 2020
Contractor: Fuquay, Inc.		Engineer's Project No.: 20-7671

**The Contract Documents are modified as follows upon execution of this Change Order:**

## Description:

Purpose of this Change Order is to extend the contract completion date to complete the 5/3/2021 punch list and to remove the remaining unfinished streets, parking lots and striping from the contract.

**Attachments (list documents supporting change):**

Change Order No. 4 Quantity Adjustments

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$ 726,670.02Increase from previously approved Change Orders No. 1 to No. 3:\$ 133,724.86

Contract Price prior to this Change Order:

\$ 860,394.88

Increase of this Change Order:

\$ (213,011.82)

Contract Price incorporating this Change Order:

\$ 647,383.06**CHANGE IN CONTRACT TIMES:**Original Contract Times:  Working days  Calendar daysSubstantial completion (days or date): October 16, 2020Ready for final payment (days or date): October 16, 2020Increase from previously approved Change Orders No. 1 to No. 3:Substantial completion (days): N/AReady for final payment (days): N/A

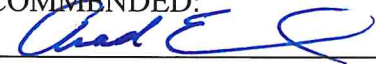
Contract Times prior to this Change Order:

Substantial completion (days or date): July 31, 2021Ready for final payment (days or date): July 31, 2021

Increase of this Change Order:

Substantial completion (days or date): N/AReady for final payment (days or date): N/A

Contract Times with all approved Change Orders:

Substantial completion (days or date): August 31, 2021Ready for final payment (days or date): August 31, 2021**RECOMMENDED:**By:   
Engineer (Authorized Signature)Date: 7/21/21**ACCEPTED:**By: \_\_\_\_\_  
Owner (Authorized Signature)

Date: \_\_\_\_\_

**ACCEPTED:**By: \_\_\_\_\_  
Contractor (Authorized Signature)

Date: \_\_\_\_\_



**Change Order No. 4 - Quantity Adjustments**  
**2020 Street Program Improvements**  
**City of Wharton**

**Changes to Existing Line Items**

Item	Item Description	Current Quantity	Units	Unit Price	Change in Quantity (+/-)	New Total Quantity	Change in Contract Price
1	Single Course Seal Coat; Removed the following: - Lakeshore Drive - 5,962 SY - Morning Side - 529 SY - Wayside (Rusk-Jr. College) - 6,347 SY - Columbus - 1,647 SY - Civic Center - 6,643 SY - Simply Divine - 2,269 SY - Guffy Park - 4,055 SY - Change Order No. 1 - 40,007 SY	283,856	SY	\$2.98	(67,459)	216,397	(\$201,027.82)
2	Reflective Pavement Markings Type II Paint; 4" BRK White	9,400	LF	\$0.45	(9,400)	0	(\$4,230.00)
3	Reflective Pavement Markings Type II Paint; 12" SLD White	384	LF	\$3.45	(384)	0	(\$1,324.80)
4	Reflective Pavement Markings Type II Paint; 24" SLD White	48	LF	\$6.90	(48)	0	(\$331.20)
5	Reflective Pavement Markings Type II Paint; 4" Double SLD Yellow	4,700	LF	\$0.85	(4,700)	0	(\$3,995.00)
6	Reflective Pavement Markings Type II Left Turn Arrow, Solid White	1	EA	\$115.00	(1)	0	(\$115.00)
7	Reflective Pavement Markings Type II Straight/Right Turn Arrow, Solid White	1	EA	\$230.00	(1)	0	(\$230.00)
8	Reflective Pavement Markings Type II Word "ONLY", Solid White	1	EA	\$180.00	(1)	0	(\$180.00)
9	Raised Pavement Markers CL B (REFL) Type II-A-A, Remove & Replace	118	EA	\$6.00	(118)	0	(\$708.00)
10	Raised Pavement Markers CL B (REFL) Type I-C, Remove & Replace	145	EA	\$6.00	(145)	0	(\$870.00)
Subtotal							(\$213,011.82)

**New Items** (Item without a unit price from original bid or previous change order)

Item	Item Description	Units	Unit Price	Quantity	Change in Contract Price
			\$0.00	0	\$0.00
Subtotal					\$0.00

Original Contract Price	\$726,670.02
Previous Change Order(s)	\$133,724.86
Contract Price Prior to this Change Order	\$860,394.88
Proposed Net Change	(\$213,011.82)
Contract Price with Approval	\$647,383.06
Cumulative % Change in Contract	-10.91%

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

## PUBLIC WORKS COMMITTEE


Meeting Date:	7/26/2021	Agenda Item:	Resolution: 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.
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Attached you will find a memo from Public Works Director, Anthony Arcidiacano, regarding the failure of the road and a section of the road that needs to be widened so planes could avoid a telephone pole in the utility easement.

The following contractors were contacted for a quote:

1. Rexco, Inc.
2. Angel Bothers.
3. Brannon Paving.
4. Sylva Construction.

Mr. Arcidiacano will be present to answer any questions.

City Manager: Joseph R. Pace	Date: Thursday, July 22, 2021
Approval: 	
Mayor: Tim Barker	



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

## MEMORANDUM

To: Mr. Joseph R. Pace, City Manager

From: Anthony Arcidiacano, Public Works Director

Date: July 19, 2021

Re: Road work at the Wharton Regional Airport

Attached please find an ariel of the 800' area of asphalt roadway at the Wharton Regional Airport that is in poor condition and needs to be paved. Mr. David Allen brought to my attention that this road was failing and there is a section that needed to be widened so planes could avoid a telephone pole in the utility easement.

The following contractors were contacted for a quote :

Rexco, Inc : 6/29/21, Spoke with Supervisor, Blake and he informed me they were booked until next year.

Angel Brothers : 7/7/21, Spoke with Estimator, Kevin Guy and he informed me the job was too small for them to provide us a quote.

Brannon Paving : 6/29/21, Spoke with Sean Brannon and he informed me that they only do seal coating, not hot mix asphalt.

Sylva Construction : 7/7/21, \$43,100 - hot mix asphalt pave 800' of existing 16' road and widen approxitmal 245' of it 10'.

I would like this brought to the Finance Committee on July 26<sup>th</sup>, 2021 and if approved placed on the City Council Agenda for the same day.

Should you have any questions, please contact me.

Thank you.

## Proposal

Sylva Construction Company  
 819 W. Mahan Street  
 Port Lavaca, TX 77979  
 Phone 361-552-2123

July 7, 2021

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

Attn: Anthony Arcidiacono, Public Works Director

Job: Airport Paving Project

Furnish equipment, labor, and material to widen roadway and overlay existing drive as per your dimensions shown on Goggle Aerial Image e-mailed to Sylva Construction, LLC on 7-1-21

1. Widen roadway – 245 LF X 10' wide.
  - A. Excavate 8" x 245' x 10' wide and haul off to existing dirt pile on site.
  - B. Compact subbase.
  - C. Install geo-grid.
  - D. Import and place 8" thick compacted limestone base material to grade.
  - E. Apply prime on limestone base material.
  - F. Lay HMAC Type D 2" thick x 245 LF x 10' wide.
  
2. Overlay existing roadway 2" thick x 800 LF x 16' wide with HMAC Type D.

Items 1 through 2

\$43,100.00

Airport is to furnish water needed for this project.

Thank you for giving us the opportunity to quote this job. Let me know if you have any questions.

Sam Sylva  
 Sylva Construction, LLC





**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 Sylva Construction 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 Wharton Regional Airport Paving Project, 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 the Wharton Regional Airport, 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 July 7, 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 \$43,100.00, 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 coverages 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**

By: \_\_\_\_\_  
**SAM SYLVA**



**Mayor**

**Owner/Sylva Construction**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
**City Secretary**

Attachments:

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

**DRAFT**

**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

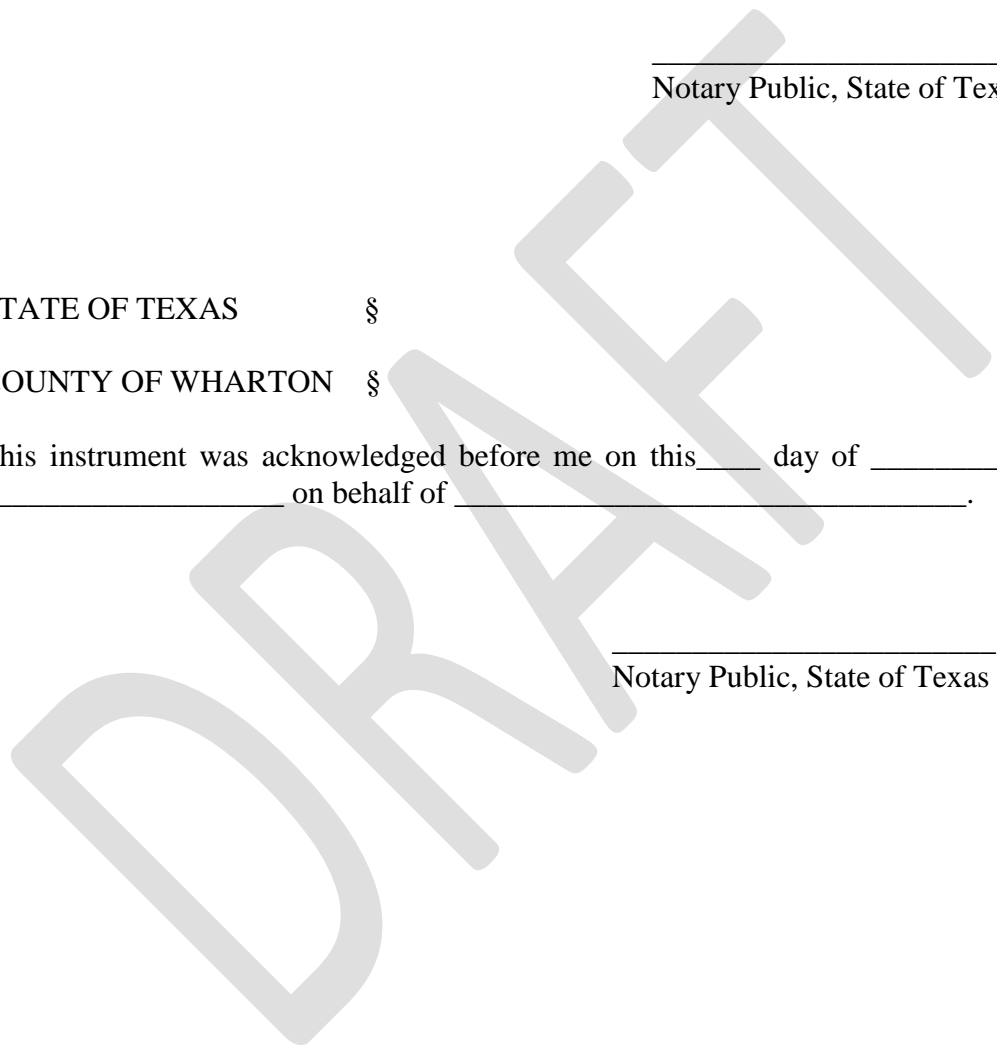


Exhibit “A”

DRAFT

## Exhibit “B”

DRAFT

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

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDED 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.**

**WHEREAS,** The Wharton City Council wishes to enter into a contract for the Wharton Regional Airport Paving Project with Sylva Construction, LLC; and,

**WHEREAS,** The City of Wharton and Sylva Construction, LLC, 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 Sylva Construction, LLC, for the Wharton Regional Airport Paving Project.

**Section II.** The City of Wharton and Sylva Construction, LLC, 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 26th day of July 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:	7/26/2021	Agenda Item:	Resolution: 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.
<p>On Friday, June 11, 2021 a cave in was found on the 21” main trunk line that feeds WWTP #2 on US 59. The emergency repair was done by Texas Pride Utilities, so they know the history and the condition of the current state of the line (depth, condition, soil. etc..). They did an emergency spot repair on the damaged area, the remainder of the clay 21” sanitary sewer main is still in poor condition and the City risks damaging it further if we use another company to clean the line. Texas Pride Utilities offers 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 will be on site to repair if necessary.</p> <p>Texas Pride Utilities-\$43,435.00-clean, televise and perform CIPP procedure.</p> <p>Public Works Director Anthony Arcidiacano will be present to answer any questions.</p>			
City Manager: Joseph R. Pace		Date: Thursday, July 22, 2021	
Approval: 			
Mayor: Tim Barker			



# City of Wharton

120 E. Caney Street ° Wharton, TX  
77488

Phone (979) 532-2491° Fax (979) 532-  
0181

## MEMORANDUM

To: Mr. Joseph R. Pace, City Manager

From: Anthony Arcidiacono, Public Works Director

Date: July 20, 2021

Re: Emergency, CIPP ( Cure In Place Pipe) for 21” sanitary sewer line repair

On Friday, June 11, 2021 a cave in was found on the 21” main trunk line that feeds WWTP #2 on US 59. The emergency repair was done by Texas Pride Utilities, so they know the history and the condition of the current state of the line ( depth, condition, soil.. etc..). They did an emergency spot repair on the damaged area, the remainder of the clay 21” sanitary sewer main is still in poor condition and we risk damaging it further if we use another company to clean the line. Texas Pride Utilities offers 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 will be on site to repair if necessary.

Texas Pride Utilities	\$43,435.00
Clean, Televise and perform CIPP procedure	

I would like this placed on the City Council agenda for July 26, 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.
7/20/2021	6904

TO:

City of Wharton TX  
CIPP

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	6,200.00	6,200.00
2	LF	CIPP EXISTING SANITARY SEWER MAIN 21" COMPLETE IN PLACE INCLUDING ALL LABOR, TOOLS, EQUIPMENT AND MATERIALS	290	118.00	34,220.00
3	LS	PRE AND POST CCTV AND CLEANING	580	5.25	3,045.00
		***Owner to provide access to water, all permits, bypass and traffic control***			

<b>Total</b>	<b>\$43,465.00</b>
--------------	--------------------

Phone #
8326070707

E-mail
lgtexaspride@yahoo.com

Web Site
www.texasprideutilities.



**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 Texas Pride Utilities 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 Emergency CIPP work for I59, 21” Sanitary Sewer Main, 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 the I59, 21” Sanitary Sewer Main, 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 July 20, 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 \$43,465.00, 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**

By: \_\_\_\_\_  
**Augustine Juarez**

**Mayor**

**Operations, Director / Texas Pride**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
**City Secretary**

Attachments:

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

**DRAFT**

**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

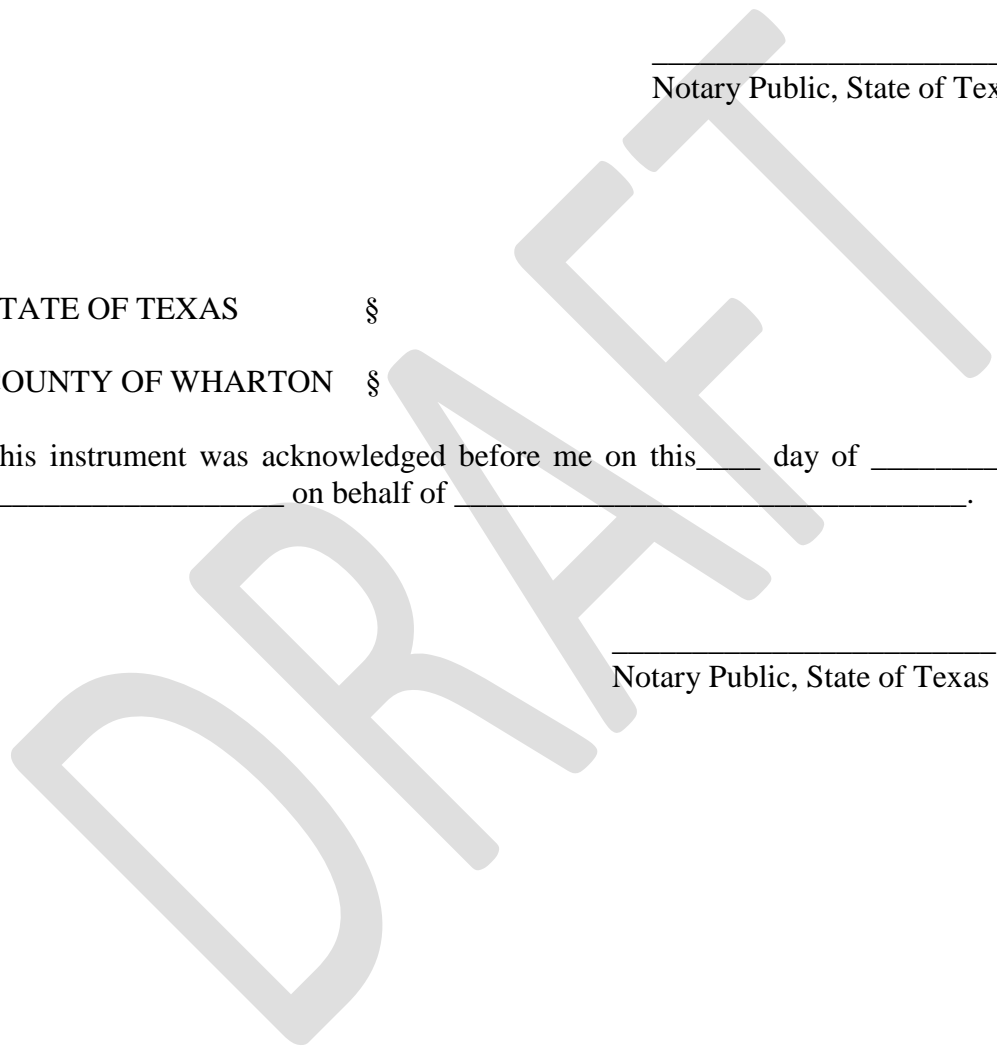


Exhibit "A"

DRAFT

# Exhibit “B”

DRAFT

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

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDED A CONTRACT 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.**

**WHEREAS,** The Wharton City Council wishes to enter into a contract for the Emergency Repairs at WWTP. No. 2 with Texas Pride Utilities to clean, televise and perform a cure in place pipe procedure; and,

**WHEREAS,** The City of Wharton and Texas Pride Utilities 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 Texas Pride Utilities for the Emergency Repairs at WWTP No. 2.

**Section II.** The City of Wharton and Texas Pride Utilities 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 26<sup>th</sup> day of July 2021.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_

**TIM BARKER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary