



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

**Monday, July 22, 2019
6:00 PM**

CITY HALL

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

Notice is hereby given that a City Council Public Works Committee Meeting will be held on Monday, July 22, 2019 at 6:00 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 18th day of July 2019.

By: 
Andres Garza, Jr., City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council Public Works Committee Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board, at City Hall of said City or Town in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on July 18, 2019, 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 18th day of July 2019.

CITY OF WHARTON

By: 
Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
City Council Public Works Committee Meeting
Monday, July 22, 2019
City Hall - 6:00 PM

Call to Order.
Roll Call.
Public Comments.

Review & Consider:

1. Minutes from the meeting held July 8, 2019.
2. Request from Just Do It Now for City assistance in removing debris left from the demolition of C.W. Dawson Elementary.
3. Request from Wharton Independent School District for the abandonment of Old Boling Road from Alabama to John Knox Street and a section of North Abell Street from East Ahldag Street to East Belle Avenue.
4. Repairs to the Santa Fe Drainage Outfall.

Adjournment.

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

PUBLIC WORKS COMMITTEE

Meeting Date:	7/22/2019	Agenda Item:	Minutes from the meeting held July 8, 2019.
Attached are a copy of the draft minutes from the meeting held July 8, 2019.			
City Manager: Andres Garza, Jr.		Date: Thursday, July 18, 2019	
Approval: 			
Mayor: Tim Barker			

**MINUTES
OF
CITY OF WHARTON
PUBLIC WORKS COMMITTEE MEETING
City Hall, 120 East Caney Street, Wharton, Texas
Monday, July 8, 2019 5:30 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 5:40 p.m.

Committee Members present: Councilmember Don Mueller and Councilmember Terry Freese.

Committee Member absent: Councilmember Clifford Jackson

Staff Members present: City Manager Andres Garza, Jr., Finance Director Joan Anzel, Assistant to the City Manager Brandi Jimenez, Community Development Coordinator Gwyneth Teves and Public Works Director John Plaia.

Staff Members absent: None.

Visitors present: Mr. Matt Breazeale-Jones & Carter and Mr. Albert Villegas.

The first item on the agenda was public comments. There were no public comments.

The second item on the agenda was to review and consider minutes from the meeting held May 28, 2019. Councilmember Don Mueller made a motion to approve the minutes as presented. Councilmember Terry Freese seconded. All voted in favor.

The third item on the agenda was to review and consider Improvements on the Alabama Channel Project. Mr. Matt Breazeale of Jones & Carter presented to the Committee the improvements needed to the Alabama Channel after the June 5, 2019 Flood Event. He stated that during the event the channel experienced high velocities. He stated that there was some damage but the channel held up very well. He stated that the company who previously did work on the channel had agreed to repair the damages at no cost under the warranty period. However, he stated that Jones & Carter is in the process of reviewing the changes, he was recommending the installation of water diffusers to slow the velocity of the water going through the structure and prevent the same type of damage. He said he was in the process of getting a cost estimate for the improvements. After some discussion, Councilmember Terry Freese made a motion to recommend to the City Council to approve a contract with Fort Bend Excavation for the improvements to the Channel not to exceed \$10,000.00. Councilmember Don Mueller seconded. All voted in favor.

The fourth item on the agenda was to review and consider Repairs to the Santa Fe Drainage Outfall. Mr. Matt Breazeale of Jones & Carter presented to the Committee the

repairs that are needed to the Santa Fe Drainage Outfall. He stated the estimated cost to bring the Outfall to the condition it was in the year 2014 would be around \$400,000.00 and the cost to total repair the Outfall would be \$800,000.00. City Manager Andres Garza, Jr. stated to the Committee that the City Staff would reach out to FEMA for the status of the funding for the project. After some discussion, no action was taken.

The fifth item on the agenda was to review and consider Update on City Projects from Jones & Carter:

1. Cloud Street Water Well Repair Project.
2. FM 102 Outfall.
3. City of Wharton Water Well Project.

Mr. Matt Breazeale stated to the Committee that the liner for the Cloud Street Water Well was installed and the estimated completion date could be as early as July. He stated to the Committee that the surveying for the FM 102 Outfall was complete. He stated that Jones & Carter had completed the review of the City of Wharton Water Well Project. He stated that there were a lot of comments. After some discussion, no action was taken.

The sixth item on the agenda was to review and consider Update on the 2019 Street Improvement Project. City Manager Andres Garza, Jr. stated the he had talked to Mr. Bradley Loehr of BEFCO Engineering and it was his recommendation to re-bid the FEMA Streets in August. He stated that the City Staff would reach out to FEMA for an extension on the project for the FEMA streets. After some discussion, no action was taken.

The eighth item on the agenda was adjournment. Councilmember Don Mueller moved to adjourn. Councilmember Terry Freese seconded. All voted in favor. The meeting adjourned at 6:50 p.m.

Andres Garza, Jr. City Manager

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

PUBLIC WORKS COMMITTEE

Meeting Date:	7/22/2019	Agenda Item:	Request from Just Do It Now for City assistance in removing debris left from the demolition of C.W. Dawson Elementary.
<p>Attached you will find a request from Mr. James Perez, President of Just Do It Now, for City assistance in removing debris left from the demolition of C.W. Dawson Elementary.</p> <p>Mr. Perez will be present to answer any questions.</p>			
City Manager: Andres Garza, Jr.		Date: Thursday, July 18, 2019	
Approval: 			
Mayor: Tim Barker			



Just Do It Now, Inc.

"A Hand Extended to Reach The World"

July 17, 2019

Dear City of Wharton Officials,

My name is James L Perez and I am the current Executive Director of Just Do It Now, Inc (JDIN). On behalf of our organization, I am humbly requesting immediate assistance from The City of Wharton to help remove demolition debris that remains at our facility, located at: 1619 MLK Blvd.

JDIN is currently in the demolition phase of building a brand new campus facility. We have demolished each of the buildings that we planned to remove from our campus in order to prepare for new construction. However, due to circumstance beyond our control, we are in need of urgent assistance to remove two large debris piles that sit on the concrete slabs at our facility. We have initiated a capital campaign and we are working hard to raise funds, as we await responses from grant applications.

On behalf of the hundreds of Wharton families and children that we serve at JDIN, I am respectfully requesting any assistance The City of Wharton may be able to provide with the removal of the remaining debris. Thank you in advance for your consideration and sacrifice.

Best regards,

James L. Perez
JDIN President and
Interim Executive Director



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

CITY COUNCIL COMMUNICATION

Meeting Date:	7/22/2019	Agenda Item:	Request from Wharton Independent School District for the abandonment of Old Boling Road from Alabama to John Knox Street and a section of North Abell Street from East Ahldag Street to East Belle Avenue.
<p>The City of Wharton has been in discussions with WISD Superintendent Tina Herrington since November 26, 2018 for the WISD Bond Improvements. At the meeting on that date it was requested of City Staff to proceed with a request to abandon 2 street sections in the City.</p> <p>The school is requesting that the City of Wharton abandon a section of Old Boling Road from Alabama Rd. to John Knox St. and a section of N. Abell St. from E. Ahldag St. to E. Belle Ave.</p> <p>The City Staff will require the areas to be replatted and the ROW be platted as an easement if the request is approved.</p>			
City Manager: Andres Garza, Jr.		Date: Thursday, July 18, 2019	
Approval: 			
Mayor: Tim Barker			



City of Wharton

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

MEMORANDUM

DATE: July 17, 2019
FROM: Gwyneth Teves, Community Development Director
TO: Mr. Andres Garza, Jr., City Manager

The City of Wharton has been in discussions with WISD Superintendent Tina Herrington since November 26, 2018 for the WISD Bond Improvements. At the meeting on that date it was requested of City Staff to proceed with a request to abandon 2 street sections in the City.

The school is requesting that the City of Wharton abandon a section of Old Boling Road from Alabama Rd. to John Knox St. and a section of N. Abell St. from E. Ahldag St. to E. Belle Ave.

The City Staff will require the areas to be replatted and the ROW be platted as an easement if the request is approved.

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



WHARTON INDEPENDENT SCHOOL DISTRICT

Office of the Superintendent, Tina Herrington

2100 N. Fulton • Wharton, Texas • 77488

979.532.3612

February 18, 2019

City of Wharton
120 East Caney Street
Wharton, Texas 77488

Attn: Mr. Andres Garza, Jr. City Manager

Re: Request for Street Closure
Wharton Independent School District
N. Abell Street & Old Boling Highway

Mr. Garza,

It is the Wharton Independent School District's desire to have certain sections of existing City Streets closed to through traffic for the development of facilities proposed by the District. In consideration of such, the District will assume surface rights to the property and grant easement to the City of Wharton for any known existing utilities which are currently found. In both locations, we consider the streets to be non-collector streets and classify them as minor streets. The development of these proposed closures will be advantageous to the School District for the implementation of procedures for school security, creation of green space for detention of storm water, and provide safe pedestrian access at both street closures. We also feel that it will be advantageous for the City of Wharton specific to the maintenance of existing paved minor streets and reduction of traffic at C.G. Sivells Elementary School.

Currently at the Wharton High School, the Athletic Field House and practice field are separated from the main campus by N. Abell Street. We are proposing a new Agriculture Education Project Center. In development of the Koehl Property, we propose that the street be closed the entire length from E. Belle Ave. to E. Ahldag Ave. As there are numerous buildings entrances along the east side of Abell Street, certain portions of the street would remain paved for access to these buildings as well as used by Emergency Response Vehicles and or Fire Apparatus Vehicles. The school intends to limit access at the Intersection of Abell and Belle Street to WISD Maintenance Vehicles and Student and Staff vehicular access to the Ag Ed Project Center. We will provide Knox Box access for the City of Wharton if acceptable. We are working with our Architects at the present time to facilitate security fencing around the High School campus which will encompass the practice field and field house. In the discussion with them and their consultants, the desire to have green space for potential detention as well as pedestrian walkways from the main campus to our outlying facility will be important for our students and staff.



WHARTON INDEPENDENT SCHOOL DISTRICT

Office of the Superintendent, Tina Herrington

2100 N. Fulton • Wharton, Texas • 77488

979.532.3612

Additionally, during the surveying of the Koehl property, the surveyor discovered that there was a street dedicated which separated the Koehl property and the District's practice football field and Football Field House. The name of the street is Wako Street with a measurement of 50'. We have attached a copy of the survey for reference. With this street not being developed, we would like for the city to consider removing this street from the recorded plat.

At the existing baseball field located along FM 1301, we are planning for the construction of a new Softball Field with Concession/Restroom facility to be shared between the baseball and softball fields. The proposed development will require additional parking to meet the current parking ordinance. At present, the District owns the old Santa Fe Railroad right of way between FM 1301 and Old Boling Rd. Our requested street closure would be the Old Boling Rd. from John Knox Street to N. Alabama Rd. In planning this development, we intend to create a double loaded parking area over portions of the existing road and green space and also provide stack space for parent pick-up and drop-off at Sivells Elementary School. We feel that in doing this it will certainly reduce the traffic pattern on busy arterial streets at that location and will be safer and a more efficient route for our students. It is our intention to grant utility easements to the City of Wharton for the known utilities in existence. The plan of the parking area, entry to the proposed complex and stack drive to Sivells Elementary School has maintained the existing easement for the overhead power lines. These should not be affected by our proposed development.

Wharton Independent School District would also pay for and provide instruments of service to the City of Wharton for the platting of these street closures so that they can be formally recorded in the Wharton County Deed of Records.

In closing, we enthusiastically look forward to these proposed developments for our school system and the community of Wharton. We request that we be placed on the City Council agenda for the February Meeting for approval of these requested closures. Please advise if there is any other information that will be necessary for you to present to the Council.

Respectfully,

Tina Herrington
Superintendent of Schools

FIRST PRESBYTERIAN CHURCH
1602 John Knox Street
Wharton, Texas 77488

City of Wharton
Attn: City Manager
120 East Caney Street
Wharton, Texas 77488

RE: Closure of Portion of Old Boling Highway

Mr. Garza,

On behalf of the First Presbyterian Church, located at 1602 Knox Street, Wharton, Texas 77488 (the "Church"), please accept this letter as confirmation of the Church's agreement with the closure of Old Boling Highway from John Knox Street to Alabama Street as shown in the diagram attached as Exhibit "A." The Church has no objection to the closure of such portion of Old Boling Highway.

Please do not hesitate to contact me if you would like to discuss.

Sincerely,



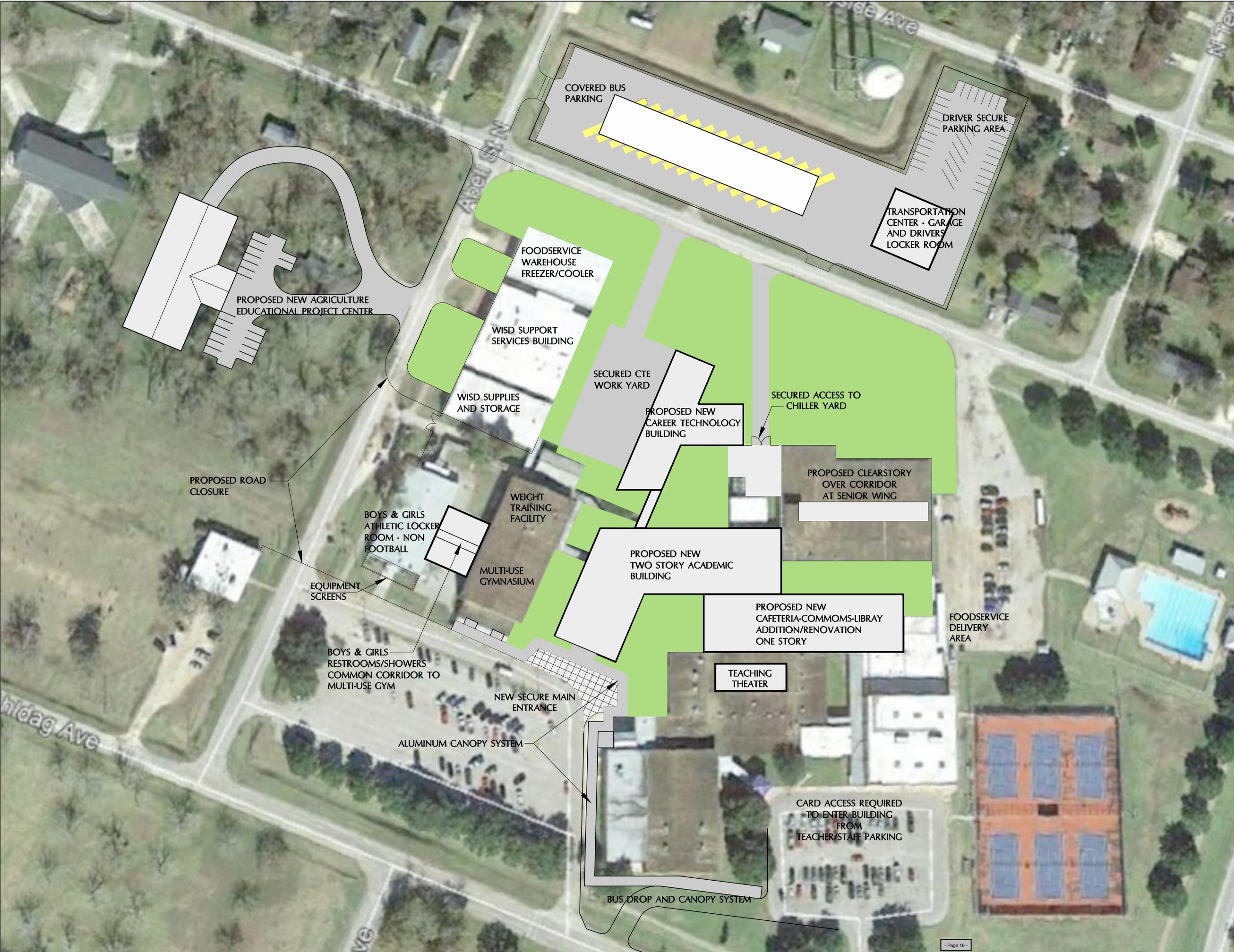
Deborah Cenko, Pastor
First Presbyterian Church

RECEIVED
JUL 1 2008
B/S

EXHIBIT "A"



WHARTON HIGH SCHOOL PROPOSED ADDITIONS AND RENOVATIONS



TBAE NOTICE - SUBCHAPTER F
PURSUANT TO RULE 110.08 OF THE RULES AND
REGULATIONS OF THE TEXAS BOARD OF ARCHITECTURAL
EXAMINERS, THIS DRAWING IS NOT COMPLETE AND MAY
NOT BE USED FOR REGULATORY APPROVAL, PERMIT,
OR CONSTRUCTION.
RWS ARCHITECTS INC. 01/2025

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

PUBLIC WORKS COMMITTEE

Meeting Date:	7/22/2019	Agenda Item:	Repairs to the Santa Fe Drainage Outfall.
<p>Attached you will find an Engineering Contract with Jones & Carter for the repairs to the Santa Fe Drainage Outfall.</p>			
City Manager: Andres Garza, Jr.		Date: Thursday, July 18, 2019	
Approval: 			
Mayor: Tim Barker			



City of Wharton

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

MEMORANDUM

DATE: July 17, 2019
FROM: Gwyneth Teves, Community Development Director
TO: Mr. Andres Garza, Jr., City Manager

The City of Wharton contracted with Jones and Carter Engineering on November 27, 2017 for all disaster engineering services to be utilized for two years. City staff is currently working with Jones and Carter under that existing contract on engineering services for the Santa Fe Outfall.

The Santa Fe Outfall received damaged after Hurricane Harvey in 2017 and a Public Assistance Project was filed with FEMA for assistance in repairing the structure. As of this date, FEMA still is in review of that Public Assistance request and we have not received obligated funds from FEMA on the Outfall.

On June 5, 2019, during the high rain event the Santa Fe Outfall structure received additional damages that now require repairs be made immediately. The City Staff has requested Jones and Carter create a 2-phase work authorization under the above-mentioned contract to complete engineering designs and bid packets for Phase 1 – Repairs and Phase 2 – Mitigation. The repairs will need to begin as soon as possible.

There is a request into FEMA on clarification of whether we could still be eligible for reimbursement once obligated if we begin the work prior to their approval. This is troubling, however, the facility at this time is not in any condition to continue to wait on a determination by FEMA.

It is my recommendation to you that the contract work authorizations with Jones and Carter be approved and engineering work be authorized to begin.

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

STATE OF TEXAS §
 §
COUNTY OF WHARTON §

PROFESSIONAL ENGINEERING SERVICES CONTRACT

This is a Contract between the CITY OF WHARTON (“CITY”), acting by and through its Wharton City Council and duly authorized Honorable Mayor, Tim Barker; and Jones & Carter, Inc., a Texas corporation and independent contractor, doing business in Texas (“Engineer”), acting herein by its duly authorized Vice President, Matt B. Breazeale, P.E., 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: Santa Fe Outfall Ditch Repair.

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

1. Scope of Services

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

2. Compensation

CITY will pay Engineer for the technical and professional services described in Exhibit "A" in accordance with the Performance Schedule as outlined Exhibit "C," and for a cost reimbursable, initial total amount of Basic Services Compensation which shall not exceed \$113,485.00 for work relating to the above described Project, as financially outlined in Exhibit “B.”

3. Method of Payment

A. Compensation under all invoices shall be in accordance with percentages of engineering work completed, and at the hourly rates described in Exhibit "B." CITY shall pay Engineer its fees based on the presentation by Engineer to CITY of a monthly summary statement for all current amounts earned under the Contract, including the identity of persons engaged on the Project, their time, hourly rates and reimbursable charges. All necessary supporting documentation

consisting of timesheets, travel vouchers, and third-party receipts and invoices confirming and verifying the accuracy of the fees and expenses will be maintained by the Engineer at its Bellaire, Texas offices for three (3) years after Project completion and will be made available for CITY audit upon request. CITY will then attempt to pay Engineer its fees within ten (10) calendar days after the CITY approval, but in no event later than thirty (30) calendar days after presentation of an accurate monthly statement by Engineer to CITY. A charge of 6% per annum may be added to its billing for any delinquent payments not made by the CITY within thirty (30) calendar days. CITY shall have initial sole discretion in the approval or disapproval of any compensation to Engineer, and any disputed amounts will be discussed and negotiated in good faith between the senior management of CITY and Engineer.

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

4. Engineer's Standard of Care

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

5. Ownership of Documents

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

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

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

6. Insurance

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

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

- (1) Commercial General Liability Insurance – Limit of liability not less than \$1,000,000.00 per occurrence. Engineer agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent, providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent engineering subconsultant/subcontractor contractual liability.
- (2) Professional Errors and Omissions Liability Insurance – Limit of liability not less than \$2,000,000.00 per claim(s) made. Engineer agrees to maintain Professional (Errors & Omissions) Liability coverage to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay damages by reason of any act, malpractice, error or omission of the

Engineer, or any person employed or acting on the Engineer's behalf (including but not limited to subconsultants/subcontractors). For policies written on a "claims-made" basis, Engineer agrees to maintain a retroactive date prior to or equal to the effective date of this Contract, and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased, with a minimum reporting period not less than two (2) years after the completion of this Contract. The Engineer is solely responsible for any additional premium for the supplemental extended reporting period.

(3) Comprehensive Business Automobile Liability Insurance – Limit of liability not less than \$1,000,000.00 per occurrence. Engineer agrees to maintain a standard ISO version Business Automobile Liability policy, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Should the Engineer not own any automobiles, the business auto liability requirements shall be amended to allow the Engineer to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

(4) Workers' Compensation Insurance & Employers' Liability Insurance – Texas Statutory minimum coverage and 500,000.00/\$500,000.00/\$500,000.00 coverages. The Engineer agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Engineer shall require the subconsultant/subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subconsultant/subcontractor.

B. Engineer shall add the City of Wharton, together with its Council Members, officers and employees, as "Additional Insureds" on all required insurance policies, except worker's compensation, employers' liability and professional errors and omissions insurance.

C. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their respective company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required basic information referenced or indicated thereon. CITY shall have no duty to pay or perform under this Contract until such Certificate(s) shall have been delivered to CITY and no officer, employee or agent of CITY shall have the authority to waive this requirement.

CITY reserves the right to review the insurance requirements of this Paragraph 6. during the effective period of this Contract and any extension or renewal hereof, and to modify insurance coverages and respective limits when deemed necessary

and prudent by the CITY, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will CITY allow modification whereupon CITY may incur increased risk. Engineer may be entitled to more or less compensation depending upon the City's actions regarding any insurance coverage adjustments.

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

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

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

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

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

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

7. **INDEMNIFICATION AND LIMITATION OF LIABILITY**

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

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

CITY HEREBY RELEASES ENGINEER FROM ANY LIABILITY EXCEEDING SUCH AMOUNTS.

8. Addresses for Notices and Communications

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

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

Engineer

Jones & Cater, Inc.
6330 West Loop South, Suite 150
Bellaire, Texas 77401
Attn: Matt B. Breazeale, P.E.
Telephone 713.777.5337

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 interest, 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 3 day of July, 2019.

Jones Carter, Inc.

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

EXECUTED in triplicate originals on this _____ day of _____, 2019.

CITY OF WHARTON

ATTEST:

Name: Paula Favors
Title: City Secretary

By: _____
Name: Tim Barker
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WHARTON §

This instrument was acknowledged before me on the ____ day of _____, 2019, by the Honorable TIM BARKER, Mayor of the CITY OF WHARTON, TEXAS.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF Harris §

This instrument was acknowledged before me on the 3rd day of JULY, 2019, by Matthew Brezeale, of Jones/Carter, Inc., a Texas corporation on behalf of said corporation.

[Signature]
Notary Public, State of Texas

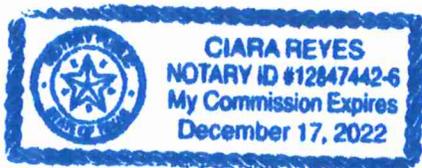


EXHIBIT "A"

DESIGN AND CONSTRUCTION OBSERVATION SCOPE OF SERVICES FOR THE CITY OF WHARTON SANTA FE OUTFALL DITCH REPAIR

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

A. General: The Engineer shall serve as the CITY'S professional representative in the planning design and observation of construction of the Project, and shall give consultation and advice to the CITY during the performance of his Services. The Project consists of repairing the existing outfall structure, restore site to previous conditions and construct additional erosion protection measures to mitigate for future erosion during storm events. The work includes importing and grading fill within the outfall erosion areas, backfilling around the headwall structure, removal of existing concrete rubble, installing concrete slope paving, rip rap, outfall energy dissipators and proposed additional erosion protection structures (possible sheet pile structures), and site restoration. The Project is located along the Colorado River, west of FM 1299, and north of Hutchins Road. The limits of the project begin approximately 150' west of FM 1299 to approximately the ROW of FM 1299. The Santa Fe ditch outfalls to Colorado River and is within the 100-year floodplain per FIRM Map Panel 48481C0365F, dated December 21, 2017.

B. Basic Services of the Engineer:

(1) Survey Phase:

- (a) JC will perform a topographic survey of the existing ditch, within the limits described above, including the existing headwall structures. Survey will include all erosion repair areas and visible signs of underground utilities within the project limits.
- (b) Construction staking will be performed prior to work beginning on site to help guide the contractor with the construction of the design. Post construction, an as-built survey will be completed to assure that the design was constructed correctly and that elevations, flowlines, and all other measurements are correct.

(2) Preliminary Engineering Phase:

- (a) Prior to design of the repair, a geotechnical investigation service will be engaged to undertake existing soil analysis. Various drilling and sampling of soil borings will be performed for laboratory testing.

Depending on the origin of the slope failures and bank instabilities, the geotechnical engineer will develop one or more solution for remediating the bank.

- (b) Coordinate with Structural Engineer for preliminary design parameters of the sheet pile bulkhead and necessary calculations.
- (c) Perform field visit to verify site conditions depicted in topographic survey.
- (d) Prepare preliminary design documents and data showing the scope of the work to be performed by the contractor on the project and furnish said documents to the City for review and acceptance.

(3) Design Phase:

- (a) Utilize the recommendation from the geotechnical investigation to determine final side slopes, outfall backfill, and erosion protection options for the outfall repair and furnish drawings to the City, including all necessary traffic control, sediment control, and other details. Based on the acceptance of the preliminary design documents prepare for incorporation in the Contract Documents, final drawings to show the character and scope of the work to be performed by the contractors on the Project (hereinafter called "Drawings"), and Specifications.
- (b) Furnish to the CITY such documents and design data as may be required for, and assist in the preparation of, the required documents so that CITY may obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
- (c) Advise the CITY of any adjustments to his latest opinion of probable Project Cost caused by changes in scope, design requirements or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.
- (e) Prepare bid forms, notice to bidders, instructions to bidders, general conditions and supplementary conditions and other related documents generally based upon the CITY'S standard bidding and

construction form documents to be provided to Engineer by the CITY.

- (e) Furnish electronic copies of the above documents for review by the CITY.

(4) Construction Phase:

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

- (a) Assist the CITY in obtaining bids or negotiating competitive sealed proposals for each separate prime contract for construction or equipment.
- (b) Consult with and advise CITY as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Contract Documents.
- (c) Consult with and advise CITY as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.
- (d) Assist CITY in evaluating bids or competitive sealed proposals and in assembling and awarding contracts.
- (e) Consult with and advise CITY and act as its representative as provided in the Standard General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and authority of the Engineer as assigned in said Standard General Conditions shall not be modified without the Engineer's written consent. All of the CITY'S instructions to Contractor(s) will be issued through the Engineer who will have authority to act on behalf of the CITY to the extent provided in said Standard General Conditions except as otherwise provided in writing.
- (f) Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he shall not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of work; he shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and

programs incident to the work of Contractor(s). His efforts will be directed toward providing assurance for CITY that the completed Project will conform to the Contract Documents, but he shall not be responsible for the failure of the Contractor(s) to perform the construction work in accordance with the Contract Documents. During such visits and on the basis of his onsite observations Engineer shall keep the CITY informed of the progress of the work, shall endeavor to guard the CITY against defects and deficiencies in the work of Contractor(s) and may disapprove or reject work as failing to conform to the Contract Documents.

- (g) Review and approve Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which any Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.
- (h) Issue all instructions of CITY to Contractor(s); prepare routine change orders as required; he may, as CITY'S representative, require special inspection or testing of the work; he shall act as interpreter of the requirements of the Contract Documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of CITY and Contractor(s) relating to the execution and progress of the work and all other matters and questions related thereto; but the Engineer shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- (i) Based on his onsite observations and on his review of Contractor(s)' applications for payment and the accompanying data and schedules, determine the amounts owed to Contractor(s) and approve in writing payments to Contractor(s) in such amounts. Such approvals of payment will constitute a representation to CITY, based on such observations and review, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his

approval), but by approving an application for payment the Engineer will not be deemed to have represented that he has made any examination to determine how or for what purpose any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the Contractor(s)' work, materials or equipment has passed to the CITY free and clear of any attempted lien, claims, security interests or encumbrances, or that he has made a thorough and comprehensive examination to determine the extent to which the Contractor has performed in accordance with the Contract Documents.

- (j) Conduct a review to determine if the Project is substantially complete and a final review to determine if the Project appears to have been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that the Engineer may approve, in writing, final payment to each Contractor.
- (k) The Engineer shall not be responsible for the acts or omissions of any Contractor, any subcontractor or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except his own employees and agents) at the Project site or otherwise performing any of the work of the Project.
- (l) Prepare for the CITY, within sixty (60) calendar days after completion of the construction, a set of record prints marked "Record Drawings" showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to Engineer and which Engineer considers significant.
- (m) Provide assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance. CITY will be furnished copies of all shop drawings, equipment literature, wiring diagrams, etc., submitted to the Engineer for approval by the Vendor.

C. Additional Services of Engineer:

(1) General:

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

- (a) Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- (b) Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the CITY.
- (c) Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, CITY'S schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the Engineer's control.
- (d) Providing renderings or models for the CITY'S use.
- (e) Preparing documents for alternate bids requested by CITY for work which is not executed or documents for out of sequence work.
- (f) Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the CITY.
- (g) Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for interior design, selection of furniture and furnishings, communications, acoustics, kitchens and landscaping.
- (h) Services in connection with change orders to reflect changes requested by CITY if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

- (i) Services during out of town travel required of the Engineer, other than visits to the Project site as required by Paragraph I.B. (1) (b) of Exhibit "A".
- (j) Additional or extended services during construction made necessary by: (1) work damaged by fire or other cause during construction; (2) a significant amount of defective or neglected work of any Contractor; (3) prolongation of the contract time of any prime contract by more than sixty (60) calendar days; (4) acceleration of the work schedule involving services beyond normal working hours; and (5) default by any Contractor.
- (k) Construction staking for the Project.
- (l) Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.
- (m) Preparation of operating and maintenance manuals.
- (n) Services after completion of the Construction Phase, such as inspections during any workmanship guarantee and/or equipment warranty periods and reporting observed discrepancies under warranties/guarantees called for in any contract for the Project.
- (o) Preparing to serve or serving as a consultant or witness for CITY in any litigation, public hearing or other legal or administrative proceeding involving the Project.
- (p) Additional services in connection with the Project, including services normally furnished by the CITY and services not otherwise provided for in this Contract.
- (q) If requested by the CITY or recommended by the Engineer and agreed to in writing by the CITY, a Resident Project Representative and assistant(s) will be furnished and will act as directed by the Engineer in order to provide more extensive CITY representation at the Project site during the Construction Phase. Such services, if required, will be paid for by CITY as indicated in Paragraph I.C. of Exhibit "B", and Attachment One.
- (r) Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the Engineer shall endeavor to provide further protection for CITY against defects and

deficiencies in the work, but the furnishing of such resident Project representation will not make the Engineer responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

D. Reimbursable Services of the Engineer: Reimbursable services shall include the following items when authorized in advance and in writing by the CITY: transportation and subsistence of principals and employees on special trips to the Project or to other locations; long distance telephone calls as required to monitor the work of the Contractor; reproduction of drawings and specifications in addition to those already specified in Paragraphs I.B.(1)(e) of Exhibit "A" to this Contract.

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

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

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

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

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

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

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

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

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

EXHIBIT "B"

COMPENSATION FOR ENGINEERING SERVICES FOR THE CITY OF SANTA FE OUTFALL DITCH REPAIR

I. THE CITY'S PAYMENTS TO THE ENGINEER:

A. General:

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

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

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

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

B. Payments for Basic Services of the Engineer: The CITY shall pay the Engineer for the Basic Services described in Paragraph 2. of this Contract, a cost reimbursable basic fee not-to-exceed \$37,750, with progress payments as herein provided.

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

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

EXHIBIT "B"

**ATTACHMENT ONE
SCHEDULE OF CHARGES**

I. Compensation for Engineering services pursuant to the cost reimbursable format, and not-to-exceed initial Basic Services Compensation, shall be on an hourly basis at the rates set forth below, which are subject to change annually on January 1, 2020 and any year thereafter.

<u>TASK</u>	<u>ESTIMATED COST</u>
A. Preliminary Engineering Services	\$16,385
B. Project Management and Coordination.....	\$10,000
C. Geotechnical Services.....	\$5,900
D. Structural Services	\$7,500
E. Design Engineering Services	\$47,500
F. Construction Engineering Services	\$5,700
G. Survey Services	\$10,000
H. Field Project Representation	\$9,800
I. Reimbursable Expenses	\$700
Total Cost.....	\$113,485

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.



SCHEDULE OF HOURLY RATES
Effective January 2019 - Subject to Annual Revision in January 2020

ENGINEERING PERSONNEL

Design Engineer I	\$100
Design Engineer II	\$120
Professional Engineer I	\$140
Professional Engineer II	\$160
Professional Engineer III	\$185
Professional Engineer IV	\$215
Professional Engineer V	\$230
Practice Leader	\$250

ELECTRICAL ENGINEERING PERSONNEL

Electrical Design Engineer I	\$110
Electrical Design Engineer II	\$130
Electrical Professional Engineer I	\$155
Electrical Professional Engineer II	\$170
Electrical Professional Engineer III	\$190
Electrical Professional Engineer IV	\$225
Electrical Professional Engineer V	\$240

CONSTRUCTION PERSONNEL (Includes Mileage)

Project Representative I	\$ 60
Project Representative II	\$ 85
Project Representative III	\$105
Project Representative I – Treatment Facilities	\$ 85
Project Representative II – Treatment Facilities	\$110
Project Representative III – Treatment Facilities	\$135
Construction Manager I	\$100
Construction Manager II	\$120
Construction Manager III	\$140
Construction Manager IV	\$160
Construction Manager V	\$185

SOFTWARE ENGINEER

Software Engineer I	\$120
Software Engineer II	\$185
Software Engineer III	\$230

PLANNING PERSONNEL

Planner I	\$ 90
Planner II	\$120
Planner III	\$150

DESIGNERS/DRAFTING PERSONNEL

CAD Operator I	\$ 55
CAD Operator II	\$ 75
CAD Operator III	\$ 95
Designer I	\$ 95
Designer II	\$115
Designer III	\$135
GIS Operator I	\$ 80
GIS Operator II	\$105
GIS Operator III	\$140

SURVEYING PERSONNEL

1-Person Field Crew	\$125
2-Person Field Crew	\$170
3-Person Field Crew	\$205
4-Person Field Crew	\$235
Scanner Equipment	\$100
Survey Technician I	\$ 65
Survey Technician II	\$ 80
Survey Technician III	\$100
Project Surveyor I	\$ 75
Project Surveyor II	\$ 85
Project Surveyor III	\$100
Project Surveyor IV	\$115
Chief of Survey Crews	\$100
Registered Professional Land Surveyor	\$160
Survey Manager	\$185

OFFICE PERSONNEL

Engineer's Assistant I	\$ 60
Engineer's Assistant II	\$ 75
Engineer's Assistant III	\$ 85
Admin I	\$ 55
Admin II	\$ 75
Admin III	\$100
Assistant Controller/ Chief Accountant	\$110
Corporate/Project Acct. I	\$ 75
Corporate/Project Acct. II	\$ 90

JC2019 Standard revised 11/29/18

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, Stephen C. Reiter, 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:

Matt B. Breazeale, PE
Stephen C. Reiter, PE

EXHIBIT "B"
ATTACHMENT TWO
SCHEDULE OF PROJECTED REIMBURSABLE
SERVICES



SCHEDULE OF REIMBURSABLE EXPENSES
 Effective January 2019
 Subject to Annual Revision in January 2020

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 2019
Standard

EXHIBIT "C"

PERFORMANCE SCHEDULE FOR ENGINEERING SERVICES ON THE CITY OF WHARTON SANTA FE OUTFALL DITCH REPAIR

I. Engineer understands that the Project Scope of Services outlined herein should be completed within ninety (90) 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.

- A. Surveying & Preliminary Phase: 30 calendar days
- B. Design Phase: 60 calendar days
- C. Construction Phase: as agreed upon by City with contractor(s)

EXHIBIT “D”

**CITY’S DESIGNATED PROJECT REPRESENTATIVE FOR THE CITY
OF WHARTON SANTA FE OUTFALL DITCH REPAIR**

- I. Gwyneth Teves



6330 West Loop South, Suite 150
 Bellaire, Texas 77401
 Tel: 713.777.5337
 Fax: 713.777.5976
 www.jonescarter.com

**PRELIMINARY COST ESTIMATE
 FOR CONSTRUCTION OF
 SANTA FE OUTFALL DITCH REPAIR - OPTION B
 CITY OF WHARTON
 July 2, 2019**

Item No.	Description	Unit	Qty.	Unit Price	Total
1.	Move-in and Start-up	L.S.	1	\$ 27,500	\$ 27,500
2.	Site Prep & Clearing and Grubbing	Ac.	1	10,000	10,000
Washout Repair					
3.	Removal and Disposal of Trees and Debris from washout	L.S.	1	20,000	20,000
4.	Removal and Disposal of Existing Slope Paving	S.Y.	65	200	13,000
5.	Clearing and grubbing of area around washout	Ac.	1	5,000	5,000
6.	Excavate, Haul, and Dispose of on site material	C.Y.	360	15	5,400
7.	Desilt 2' (2-foot) from bottom of washout and disposal	C.Y.	260	15	3,900
8.	Over-excavate additional 10' (10-foot) from TOB	C.Y.	1,000	15	15,000
9.	Import, spread and compact Select Fill	C.Y.	4,620	20	92,400
10.	Install 5" Concrete Slope Paving	S.Y.	200	110	22,000
11.	TOE Wall's for Concrete Slope Paving & Ex. Structure	C.Y.	50	500	25,000
12.	Install Grade II Riprap	S.Y.	400	85	34,000
13.	Cement Sand	C.Y.	200	50	10,000
14.	Energy Dissipators	Ea.	10	3,500	35,000
15.	Sheetpile	L.F.	80	2,800	224,000
Additional Items					
16.	Construction Access	Ea.	1	\$ 5,000	\$ 5,000
17.	Hydromulch Seeding	Ac.	1	5,000	5,000
18.	Coffer Dam	Ea.	1	10,000	10,000
19.	Dewatering and pumping	L.S.	1	25,000	25,000
20.	SWPPP	Ea.	1	15,000	15,000
21.	TxDOT Permit & ROW Investigation	Ea.	1	5,000	5,000
				Subtotal	\$ 607,200
				Contingencies (20%)	\$ 121,000
				GRAND TOTAL (CC):	\$ 728,200

Notes:

⁽¹⁾ This estimate represents my best judgement as a design professional familiar with the construction industry. Jones and Carter, Inc. has no control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding or market conditions. Accordingly, we cannot and do not guarantee that bids will not vary from this cost estimate. This estimate was prepared without the benefit of a detailed land plan or design.

This Document is Released for the Purpose of: General Financial Planning Under the Authority of: Engineer: <u>Zhi Gao Lee, P.E.</u> License No.: <u>103629</u> It is Preliminary in Nature and not to be Used for Feasibility of Land Purchases, Bond Applications, Loans
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⁽²⁾ This estimate does not include potential permitting requirements, including but not limited to county, city, environmental, and utilities.

⁽³⁾ This estimate does not include potential acquirement of Right of Way or easements required for construction or temporary access to perform necessary work.

⁽⁴⁾ This estimate does not include geotechnical engineering investigation and material testing

⁽⁴⁾ Total area of damaged slope paving to be determined once a survey has been completed.