



Chad Mees, Mayor
Phillip Weaver, Mayor Pro-Tempore
Gayle Jones, Council Member
Vickie Cooper, Council Member
Jesse Luna, Council Member
Shelton Gilmore, Council Member

NOTICE AND AGENDA OF A CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF BARTLETT, TEXAS

Notice is hereby given that the City Council of the City of Bartlett, Texas will hold a

Regular Called Meeting

7:00 PM
Monday, January 22, 2024
Bartlett City Hall
140 W Clark Street, Bartlett, TX 76511

For citizen comments, please contact Brenda Kelley, City Clerk at (municipalcourt@bartlett-tx.us).

CALL TO ORDER, DECLARE A QUORUM, PLEDGE OF ALLEGIANCE, AND INVOCATION

CITIZENS COMMUNICATION

(The City Council welcomes public comments on items not listed on the agenda. However, the Council cannot respond until the item is posted on a future meeting agenda. Public comments are limited to 3 minutes.)

WORKSHOP AGENDA: REVIEW/DISCUSS AND PROVIDE DIRECTION

1. Presentation, update, and discussion on AMI Implementation.
2. Presentation, update and discussion on personnel policy.
3. Discussion and direction on recruitment and retention.

CONSENT AGENDA

(The Consent Agenda includes non-controversial and routine items the Council may act on with one single vote. Any Council member may pull any item from the Consent Agenda to discuss and act upon individually on the Regular Agenda.)

PUBLIC HEARINGS

4. Hold public hearing to consider Ordinance 2024-0122-01 for the annexation of tract or parcel being 17.91 acres, more or less, situated adjacent to the City of Bartlett, W. C. Wilson Survey, A-856, Bell County.

REGULAR AGENDA: REVIEW/DISCUSS AND CONSIDER ACTION

5. Consideration and possible action to approve Ordinance 2024-0122-01 for the annexation of tract or parcel being 17.91 acres, more or less, situated adjacent to the City of Bartlett, W. C. Wilson Survey, A-856, Bell County.
6. Consideration and possible action to approve 24-01-MSA with Gessner Engineering for General Engineering services.
7. Consideration and possible action to approve 24-02-MSA with Kasberg, Patrick and Associates, LP for General Engineering services.

FUTURE AGENDA ITEMS

ADJOURN



Chad Mees, Mayor
Phillip Weaver, Mayor Pro-Tempore
Gayle Jones, Council Member
Vickie Cooper, Council Member
Jesse Luna, Council Member
Shelton Gilmore, Council Member

All items listed on the agenda are eligible for discussion and/or action. The City Council reserves the right to retire into executive session at any time during the course of this meeting to deliberate any of the matters listed, as authorized by Texas Government 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about gifts and donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.086 (Economic Development). All final deliberations and actions of the governing body shall be held in an open meeting as required by Texas Government Code 551.102.

I certify this agenda was posted, pursuant to Texas Government Code 551.043, at least 72 hours prior to the commencement of the meeting in accordance with the Texas Open Meetings Act.

Posted Friday, January 19th, at or before 7:00 P.M.

A handwritten signature in black ink that reads "Brenda Kelley". The signature is written over a horizontal line.

Posted by /s/ Brenda Kelley – City Clerk



AMI Implementation





Recap of Council Feedback

- Water AMI implementation will be a longer process from a labor/time perspective to replace
 - Will have other costs as well such as new meter boxes and repairs that come up during replacement
- Look at an electric only implementation



Electric Only Implementation

| Book # | Meters | Cost |
|---------------|---------------|------------------|
| Book 5 | 33 | 4,455.00 |
| Book 6 | 54 | 7,290.00 |
| Book 7 | 56 | 7,560.00 |
| Book 1 | 89 | 12,015.00 |
| Book 4 | 95 | 12,825.00 |
| Book 8 | 105 | 14,175.00 |
| Book 3 | 135 | 18,225.00 |
| Book 2 | 144 | 19,440.00 |
| Total | 711.00 | 95,985.00 |



Recommendation

- 2 Year Electric AMI Implementation
 - Year 1 | Books 5, 7, 6, 1, 4
 - Meters: 327
 - Cost: \$44,145
 - Year 2 | Books 8, 3, 2
 - Meters: 384
 - Cost: \$51,840



Council Feedback

- Does Council agree with the electric only AMI Implementation?
- Does Council agree with the 2-year implementation schedule?



Personnel Policy Update

City Council – Jan. 22, 2024



Recap of Council Feedback

- Holidays
 - 12 Recognized Holiday Days + 1 Personal Holiday (Does Not Rollover)
 - MLK, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving (2), Christmas (2), and New Years Day
- Vacation
 - Look at similar cities to identify best practice
- Sick Leave
 - Create administrative process that allows up to 1 week of sick leave to be converted to vacation leave
 - Look at similar cities to identify best practice
- Longevity Bonus
 - Increase, but look at similar cities to identify best practice
- Inclusivity
 - Shift to gender neutral

Vacation



| YOS | Bartlett | Recommendation | Average | Thorndale | Granger |
|-----|----------|----------------|---------|-----------|---------|
| 0 | 40 | 40 | 40 | 40 | 40 |
| 1 | 40 | 80 | 80 | 80 | 80 |
| 2 | 40 | 80 | 80 | 80 | 80 |
| 3 | 40 | 80 | 80 | 80 | 80 |
| 4 | 40 | 80 | 80 | 80 | 80 |
| 5 | 40 | 80 | 80 | 80 | 80 |
| 6 | 80 | 120 | 120 | 120 | 120 |
| 7 | 80 | 120 | 120 | 120 | 120 |
| 8 | 80 | 120 | 120 | 120 | 120 |
| 9 | 80 | 120 | 120 | 120 | 120 |
| 10 | 80 | 120 | 120 | 120 | 120 |
| 11 | 80 | 120 | 120 | 120 | 120 |
| 12 | 80 | 160 | 140 | 160 | 120 |
| 13 | 80 | 160 | 140 | 160 | 120 |
| 14 | 80 | 160 | 140 | 160 | 120 |
| 15 | 120 | 160 | 140 | 160 | 120 |
| 16 | 120 | 160 | 140 | 160 | 120 |
| 17 | 120 | 160 | 140 | 160 | 120 |
| 18 | 120 | 160 | 140 | 160 | 120 |
| 19 | 120 | 160 | 140 | 160 | 120 |
| 20 | 120 | 160 | 140 | 160 | 120 |



Sick Leave

- Bartlett
 - 7 Days:
 - Rollover Cap: 240 Hours
- Thorndale
 - 12 Days
 - Rollover Cap: 240 Hours
- Granger
 - 13 Days
 - Rollover Cap: 480 Hours
- **Recommendation**
 - **14 Days**
 - **Rollover Cap: 240 Hours**

Longevity (Per Month Basis)



| Cities | Population | Per Month | Other | Comments |
|-----------------------|------------|-----------|-------------|--|
| Rollingwood | 1,440 | 3 | | Paid per check. Multiples of 3 after each year of service. Year 1 - \$3/Paycheck, Year 2 \$6/Paycheck |
| Spring Valley Village | 4,217 | 4 | | |
| Blanco | 1,780 | 5 | | |
| Meadows Place | 4,671 | 5 | | |
| Bunker Hill Village | 3,761 | 5 | | |
| West University Place | 14,724 | 5 | | |
| Cockrell Hill | 3,719 | 5 | | Required 10 months of Service |
| Muenster | 1,580 | 5 | | |
| Gonzales | 7,098 | 5 | | |
| Seguin | 30,902 | 5 | | |
| Portland | 20,536 | 5 | | |
| El Campo | 12,290 | 5 | | |
| Katy | 24,005 | 5 | | |
| Caldwell | 4,109 | 6 | + \$25 flat | |
| Selma | 11,619 | 10 | | |
| Teague | 3,477 | 10 | | |



Longevity (Alternative Basis)

| Cities | Population | Other |
|-----------------|------------|---|
| Devine | 4,410 | Year 1-5 \$1,000 Year 6-10 \$1,500 Year 11-19 \$1,700 Year 20+ \$2,000 |
| Lorenzo | 964 | Year 1-4 10 Hours of Pay Year 5-9 15 Hours of Pay Year 10+ 20 Hours of Pay |
| New Fairview | 1,438 | Year 1 \$100 Year 2 and up + \$36 per additional year |
| West Lake Hills | 3,322 | \$15 per pay period (minimum 3 years) Additional \$5 for each year thereafter Max \$100 per pay period |
| Castroville | 3,005 | \$100 per year of service |
| Hamilton | 2,871 | 3 Years \$200 per year 5 Years \$300 per year 10 Years \$600 per year 15 Years \$700 per year 20 Years \$800 per year |



Longevity Options

- Option 1
 - Increase from \$2 a month to \$5 a month
 - 1 Year - \$60
 - 2 Years - \$120
 - 3 Years - \$180
- Option 2
 - By hours of pay
 - Year 1-4 | 10 Hours of Pay
 - Year 5-9 | 15 Hours of Pay
 - Year 10+ | 20 Hours of Pay
- Option 3
 - Per year amount
 - Year 1 | \$100
 - Year 2 and up | + \$50 per additional year

Council Feedback



- Vacation Leave
 - Increase to match recommendation?
- Sick Leave
 - Increase to match recommendation?
- Longevity
 - Which option do you prefer?

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS, THAT:

The City of Bartlett, Texas proposes to institute annexation proceedings to enlarge and extend the boundary limits of said city to include the following described territory, to-wit:


Fieldnotes to that certain lot, tract or parcel being 17.91 acres, more or less, situated adjacent to the City of Bartlett, W. C. Wilson Survey, A-856, Bell County, Texas, and being comprised of the following tracts: Block 21 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 22 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 23 (conveyed to Bartlett ISD in Volume 856, Page 322), and Block 24 (conveyed to Bartlett ISD in Volume 904, Page 83) in Bartlett's 4th Addition to the City of Bartlett, of record in Volume 249, Page 36; a portion of 3rd Street (aka Beckman Street) situated between the southern limits of Block 20 & 21 and Block 22 & 23, as shown on the aforesaid Bartlett's 4th Addition; A portion of Allen Street situated between the eastern limits of Block 21 & Block 22 and the western limits of Blocks 19 & 24, as shown on Bartlett's 4th Addition plat; A portion of a 60 foot wide unnamed street adjoining the eastern side of Blocks 21 & 22, a 0.509 acre portion of said street which was conveyed to Bartlett ISD in Document Number 202341156 and as shown on the plat of Bartlett's 4th Addition; A portion of an unnamed 60 foot wide street adjoining Blocks 22 & 23, of which 0.427 acre was conveyed to Bartlett ISD in Document Number 202341157, and shown on Bartlett's 4th Addition plat; A 0.137 acre tract conveyed to Bartlett ISD in Document Number 202341157; A called 4.59 acre tract (found upon resurvey to contain 4.522 acres) as conveyed to Bartlett ISD in Volume 3247, Page 407, all of record in the Bell County, Texas, Deed Records, to which references are hereby made to for any and all purposes and including all of and all of Blocks 21, 22, 23 and 24 of the Bartlett's 4th Addition to the City of Bartlett surveyed April 24, 1913 by Walter Roundtree and recorded in Drawer 249, Page 36 of the Deed Records of Bell County.

A public hearing will be held by and before the City Council of the City of Bartlett, Texas on the 22nd day of January, 2024 at 7 o'clock in the City Council Chamber of the City Hall (140 W. Clark St., Bartlett, TX) of the City of Bartlett, Texas, for all persons interested in the above proposed annexation. At said time and place all such persons shall have the right to appear and be heard. Of all said matters and things, all persons interested in the things and matters herein mentioned, will take notice.

By order of the City Council of the City of Bartlett, Texas this the 11th day of December, 2023.



Mayor

ATTEST:


City Secretary

Ordinance No. 2024-0122-01

AN ORDINANCE ANNEXING CERTAIN HEREAFTER DESCRIBED AREAS ADJACENT TO AND CONTIGIOUS TERRITORY TO THE CITY OF BARTLETT, TEXAS, ALL OF SAID PROPERTY BEING FURTHER DESCRIBED BY METES AND BOUNDS, SAID PROPERTY AND ALL ADJACENT BEING FOR ANNEXATION; EXTENDING THE BOUNDARY LIMITS OF BARTLETT SO AS TO INCLUDE SAID PROPERTY WITHIN BARTLETT'S CITY LIMITS; FINDING THAT ALL NECESSARY AND REQUIRED LEGAL CONDITIONS HAVE BEEN SATISFIED; PROVIDING THAT SUCH PROPERTY SHALL BECOME A PART OF THE CITY ORDINANCES, RESOLUTIONS, AND REGULATIONS OF THE CITY NOW IN EFFECT AND THOSE WHICH ARE HEREINAFTER ADOPTED.

WHEREAS, the City of Bartlett ("City") is a Texas General Law city municipality and a such, is authorized to annex territory subject to the laws of the State of Texas;

WHEREAS, LOC. GOV'T CODE §43.0671 permits a municipality may annex a territory adjacent to its boundaries or subject to its extraterritorial jurisdiction if each landowner in the area requests annexation;

WHEREAS the Bartlett Independent School District ("District") owns all of the following Property, to wit:

That certain lot, tract or parcel being 17.91 acres, more or less, situated adjacent to the City of Bartlett, W. C. Wilson Survey, A-856, Bell County, Texas, and being comprised of the following tracts: Block 21 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 22 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 23 (conveyed to Bartlett ISD in Volume 856, Page 322), and Block 24 (conveyed to Bartlett ISD in Volume 904, Page 83) in Bartlett's 4" Addition to the City of Bartlett, of record in Volume 249, Page 36; a portion of 3rd Street (aka Beckman Street) situated between the southern limits of Block 20 & 21 and Block 22 & 23, as shown on the aforesaid Bartlett's 4" Addition; A portion of Allen Street situated between the eastern limits of Block 21 & Block 22 and the western limits of Blocks 19 & 24, as shown on Bartlett's 4" Addition plat; A portion of a 60 foot wide unnamed street adjoining the eastern side of Blocks 21 & 22, a 0.509 acre portion of said street which was conveyed to Bartlett ISD in Document Number 202341156 and as shown on the plat of Bartlett's 4" Addition; A portion of an unnamed 60 foot wide street adjoining Blocks 22 & 23, of which 0.427 acre was conveyed to Bartlett ISD in Document Number 202341157, and shown on Bartlett's 4" Addition plat; A 0.137 acre tract conveyed to Bartlett ISD in Document Number 202341157; A called 4.59 acre tract (found upon resurvey to contain 4.522 acres) as conveyed to Bartlett ISD in Volume 3247, Page 407, all of record in the Bell County, Texas, Deed Records, said Property for annexation being more fully described by metes and bounds in **Exhibit A** and depicted in **Exhibit A-1**, both of which are attached hereto (the "Property").

WHEREAS, the District, by Petition filed with the City has requested the Property to be annexed into the City of Bartlett.

WHEREAS, the municipality has negotiated and entered into a written service agreement with the District to establish what City services will be provided within the annexed area the procedures prescribed in Local Government Code Chapter 43, subchapter c-3;

WHEREAS, on January 16th, 2024 the City conducted a public hearing allowing interested parties to be heard regarding the proposed annexation of the Property and notice of such public hearing was given in the required manner as required by Local Government Code Chapter 43, subchapter c-3; **NOW THEREFORE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BARTLETT THAT:

Section 1. The findings and recitals in the preamble of this Ordinance are hereby found to be true and correct and are hereby approved and adopted.

Section 2. The Property described herein in the attached Exhibit A, be and is hereby annexed to and brought within the corporate limits of the City of Bartlett, Bell County, Texas, and same is hereby made an integral part thereof; and that the boundary limits of the City of Bartlett be and the same are hereby extended to include the above described territory within the city limits of the City of Bartlett, and the same shall hereafter be included with the territorial limits of the City of Bartlett.

Section 3. That the official maps and boundaries of the City of Bartlett, heretofore adopted and amended be and are hereby amended so as to include the aforementioned territory as part of the City of Bartlett, Texas.

Section 3. That the Service Plan attached hereto and incorporated herein as **Exhibit B**, is hereby approved.

Section 4. The City Council authorizes the Mayor or the designated appropriate official of the City of Bartlett, is hereby directed and authorized to perform or cause to be performed all acts necessary to correct the official map of the City to add the territory annexed, as required by law.

Section 5. That the City Secretary is hereby directed and authorized to file a certified copy of this Ordinance with the Office of the County Clerk of Bell County, Texas.

Section 6. It is hereby found, determined and declared that sufficient written notice of the date, time, place and subject of the meeting of the City of Bartlett at which this Ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public for the time required by law preceding this meeting as required by chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon.

PASSED AND APPROVED this ____ day of _____, 2024.

MAYOR

Chad Mees

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

CERTIFICATE FOR ORDINANCE

I hereby certify that the foregoing Ordinance was presented to the City Council of the City of Bartlett during a meeting on January 22nd, 2024. A quorum of the City Council Members being then present, it was then duly moved and seconded that the Ordinance be adopted, and such Ordinance was then adopted according to the following vote:

Ayes: _____
Nays: _____
Abstentions: _____

To certify which, witness my hand and the official seal of the City of Bartlett Texas, this ___ day of _____, 2024.

Chad Mees, Mayor

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BELL §

BEFORE ME, a Notary Public, on this day personally appeared Chad Mees, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the Mayor of the City of Bartlett, Texas; that he was authorized to execute such instrument pursuant to the foregoing Ordinance of the City Council adopted on _____; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____, 2024.

Notary Public, State of Texas

EXHIBIT A
Meets and Bounds Description of Property to be Annexed.

City of Bartlett
W. C. Wilson Survey, A-856 – Bell County, Texas
Annexation Tract – 17.91 Acres

Fieldnotes to that certain lot, tract or parcel being 17.91 acres, more or less, situated adjacent to the City of Bartlett, W. C. Wilson Survey, A-856, Bell County, Texas, and being comprised of the following tracts: Block 21 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 22 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 23 (conveyed to Bartlett ISD in Volume 856, Page 322), and Block 24 (conveyed to Bartlett ISD in Volume 904, Page 83) in Bartlett's 4th Addition to the City of Bartlett, of record in Volume 249, Page 36; a portion of 3rd Street (aka Beckman Street) situated between the southern limits of Block 20 & 21 and Block 22 & 23, as shown on the aforesaid Bartlett's 4th Addition; A portion of Allen Street situated between the eastern limits of Block 21 & Block 22 and the western limits of Blocks 19 & 24, as shown on Bartlett's 4th Addition plat; A portion of a 60 foot wide unnamed street adjoining the eastern side of Blocks 21 & 22, a 0.509 acre portion of said street which was conveyed to Bartlett ISD in Document Number 202341156 and as shown on the plat of Bartlett's 4th Addition; A portion of an unnamed 60 foot wide street adjoining Blocks 22 & 23, of which 0.427 acre was conveyed to Bartlett ISD in Document Number 202341157, and shown on Bartlett's 4th Addition plat; A 0.137 acre tract conveyed to Bartlett ISD in Document Number 202341157; A called 4.59 acre tract (found upon resurvey to contain 4.522 acres) as conveyed to Bartlett ISD in Volume 3247, Page 407, all of record in the Bell County, Texas, Deed Records, to which references are hereby made to for any and all purposes. Said tract described as follows, to wit:

BEGINNING at a point in an existing manhole for the northwest corner of the aforesaid 4.59 acre tract, in the apparent eastern residual line of a called 9.42 acre tract conveyed to William Schleede, et al by deed of record in Volume 905, Page 430, and in a southern residual line of the Will O'Bell tract of record in Volume 1082, Page 532. Said point bears N16°08'19"E 140.00 feet and S73°48'11"E 89.36 feet (called 90.00 feet in the 4.59 acre tract description) from an iron pipe found for reference to the 4.59 acre tract. Said pipe being in the northern right of way of Clearman Street (80' r.o.w.), of record in Volume 1265, Page 807, and at the southeastern corner of the Gilbert Rodriguez tract, of record as Document Number 201847770;

THENCE SOUTH 73°48'11" EAST 680.28 feet, along the northern line of said 4.59 acre tract and said southern residual line, to a ½" iron rod (capped Goodwin-Lasiter) set for the northeast corner of the 4.59 acre tract and an "ell" corner of the Will O'Bell tract;

THENCE SOUTH 16°09'37" WEST 1038.21 feet, with the eastern line of said 4.59 acre tract, said western residual line, the eastern line of the referenced 0.137 acre tract, and picking up the eastern line of the referenced 0.509 acre tract, to a capped ½" iron rod set for the southeastern corner of the 0.509 acre tract. Same being in the eastern projection of the southern line of Block 21 of Bartlett's 4th Addition;

THENCE NORTH 73°50'23" WEST, in part with the southern line of the 0.509 acre tract, passing at 29.97 feet a mag nail for the southwest corner of the 0.509 acre tract, picking up the southern line of Block 21 and the northern right of way of Davilla Street (80' r.o.w.), passing at 359.94 feet a capped 1/2" iron rod set at the southwestern corner of Block 21, crossing 3rd Street at a total distance of 419.94 feet to a capped ½" iron rod set for corner at the southeastern corner of Block 20 (conveyed to Bartlett ISD by deeds of record in Volume 416, Page 243, and Volume 415, Page 465) and in the intersection of the western right of way of 3rd Street with the northern right of way of Davilla Street (80' r.o.w.);

THENCE NORTH 16°09'37" EAST 300.00 feet, along the eastern line of Block 20, the western right of way of 3rd Street and following the existing annexation line, of record in Volume 648, Page 102), to a capped ½" iron rod set for the northeastern corner of Block 20 in the

intersection of said western right of way with the southern right of way of Allen Street (60' r.o.w.);

THENCE NORTH 73°50'23" WEST, with said current annexation line, along the northern line of Block 20, passing at 300.00 feet a capped ½" iron rod set at the northwestern corner of Block 20, crossing 2nd Street (60' r.o.w.), passing at 360.00 feet a capped ½" iron rod set for the northeastern corner of Block 19, picking up the northern line of Block 19 and continuing a total distance of 660.00 feet to a capped ½" iron rod set for the northwestern corner of Block 19 as conveyed to the City of Bartlett in Volume 242, Page 494. Said point being in the intersection of the southern right of way of Allen Street with the eastern right of way of 1st Street (aka Robinson Street, a 70' right of way);

THENCE NORTH 16°09'37" EAST, departing from the referenced annexation, crossing Allen Street and picking up the western line of Block 23, as conveyed to Bartlett ISD by deed of record in Volume 904, Page 83, passing at 60.00 feet a capped ½" iron rod set for the southwestern corner of Block 24, passing at 210.00 feet a capped ½" iron rod set in the southern limit of an alley and at the northwestern corner of Lot 5, in Block 24, passing at 230.00 feet a capped ½" iron rod set in the northern limit of said alley and at the southwestern corner of Lot 1, Block 24, continuing a total distance of 380.00 feet to a point for the northwestern corner of Block 24 in the apparent southern line of the Good Rentals, LLC tract, of record as Document Number 201500044668 and 201500044667;

THENCE SOUTH 73°50'23" EAST, along the northern line of Block 24, the apparent southern residual line of the referenced 9.42 acre tract, and the southern limit of the referenced 60 foot wide street, passing at 300.00 feet a capped ½" iron rod set for the northeastern corner of Block 24 in the western right of way of 2nd Street, crossing 2nd Street at 360.00 feet pass a capped ½" iron rod set for the northwestern corner of Block 23, conveyed to Bartlett ISD in Volume 856, Page 322, and continuing a total distance of 399.79 feet to a capped ½" iron rod set for corner in the northern line of Lot 1, Block 23. Said point being in the southern projection of the western line of the referenced 4.59 acre tract;

THENCE NORTH 16°08'19" EAST, crossing said 60 foot wide road, along said western projection, and the aforementioned apparent eastern residual line, passing at 30.00 feet a point for the southwestern corner of the referenced Bartlett ISD .0.427 acre tract, from which a capped ½" iron bears S73°50'23"E 5.00 feet, passing at 60.00 feet a capped ½" iron rod for the northwestern corner of said 0.427 acre tract and the southwestern corner of the referenced Bartlett ISD 0.137 acre tract, passing at 69.02 feet a ½" iron rod found for the southwestern corner of the referenced 4.59 acre tract, continuing a total distance of 358.65 feet, to the Point of Beginning and containing 17.91 acres, more or less, as shown on the accompanying survey plat of even date herewith.

Bearings are NAD 83 Texas Central Zone (4203) grid values. All distances are surface.



Kirk Raymond, R.P.L.S. 4957
GLS – TBPELS Firm 10110900
Bryan, Texas
October 16, 2023



EXHIBIT B
Service Agreement

**MUNICIPAL SERVICES AGREEMENT BETWEEN
THE CITY OF BARTLETT, TEXAS AND
BARTLETT INDEPENDENT SCHOOL DISTRICT**

This Municipal Services Agreement ("Agreement") is entered into on this 22 day of January 2024 by and between the City of Bartlett, Texas, a type A General municipality of the State of Texas ("City") and Bartlett Independent School District ("District") (collectively referred to as the "Parties".)

RECITALS

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

WHEREAS, Section 43.0671 of the LGC permits the City to annex an area if each owner of land in an area requests the annexation.

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation.

WHEREAS, the District owns certain parcels of land situated in Bell County, Texas, which consists of approximately 17.91 acres of land in the City's extraterritorial jurisdiction, such property being more particularly described and set forth in **Exhibit A** attached and incorporated herein by reference ("Property").

WHEREAS, the District has filed a written request with the City for full-purpose annexation of the Property, identified as Annexation Case No.2023-01 ("Annexation Case").

WHEREAS, City and the District desire to set out the City services to be provided for the Property on or after the effective date of annexation.

WHEREAS, the Annexation Case and execution of this Agreement are subject to approval by the Bartlett City Council; and

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, City and the District agree as follows:

1. **PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the Annexation Case.
2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.
3. **MUNICIPAL SERVICES.**
 - a. Commencing on the effective date of annexation, the City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services provided by any method or means by which the City may extend

municipal services to any other area of the City, including the City's infrastructure extension policies and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

- i. Fire. The City's Volunteer Fire Department will provide emergency and fire protection services in accordance with requirements for school districts.
 - ii. Police – The City's Police Department will provide protection and law enforcement services and parties will coordinate to maintain protocols necessary to fully comply with all state imposed safety requirements of the State of Texas for School Districts.
 - iii. Emergency Medical Services - The City's Volunteer Fire Department and MedStar will provide emergency medical services.
 - vi. Planning, Zoning, and Building – The City's Planning and Development Department will provide comprehensive planning, land development, land use, and building review and inspection services in accordance with all applicable laws, rules, and regulations.
 - vii. Streets - The City will maintain City streets in accordance with existing City ordinances and policies, except where prohibited by law
 - viii. Water and Wastewater – The City will provide water and wastewater services in accordance with existing City ordinances and policies, except where prohibited by law
 - ix. Solid Waste Services – The City will provide solid waste collection services through its contract with Al Clawson Disposal, Inc. in accordance with existing City ordinances and policies, except where prohibited by law
 - x. Code Compliance – The City's Code Compliance Department will provide education, enforcements, and abatement relating to code violations within the Property
- b. It is understood and agreed that the City is not required to provide a service that is not included in this Agreement.
- c. The District understands and acknowledges that the City departments listed above may change names or be re-organized by the City Administrator. Any reference to a specific department also includes any subsequent City department that will provide the same or similar services.

4. AUTHORITY. City and The District represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. The District acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

5. SEVERABILITY. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

6. **INTERPRETATION.** The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that each of them was represented by legal counsel in the negotiation and drafting of this Agreement.

7. **GOVERNING LAW AND VENUE.** Venue shall be in the state courts located in Bell County, Texas or the United States District Court for the Western District of Texas, Waco Division and construed in conformity with the provisions of Texas Local Government Code Chapter 43.

8. **NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

9. **GOVERNMENTAL POWERS.** It is understood that by execution of this Agreement, neither the City nor the District waives or surrenders any of their respective governmental powers or immunities.

10. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11. **CAPTIONS.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

12. **AGREEMENT BINDS SUCCESSORS AND RUNS WITH THE LAND.** This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. The term of this Agreement constitutes covenants running with the land comprising the Property and is binding on the District.


13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. This Agreement shall not be amended unless executed in writing by both parties.

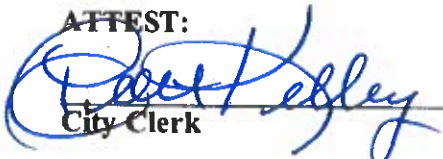
Executed as of the day and year first above written to be effective on the effective date of annexation of the Property.

CITY OF BARTLETT, TEXAS

By: 
Chad Mees, Mayor

BARTLETT INDEPENDENT SCHOOL DISTRICT

By: 
Teddy Clevenger, Superintendent of Schools

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

THE STATE OF TEXAS §
§ ACKNOWLEDGMENT
COUNTY OF BELL §

BEFORE ME, a Notary Public, on this day personally appeared, Chad Mees, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the Mayor of the City of Bartlett, Texas; that he was authorized to execute such instrument; and acknowledged that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 27 day of December, 2023.

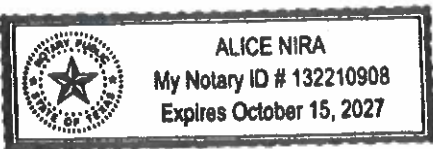


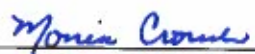
Notary Public, State of Texas

THE STATE OF TEXAS §
§ ACKNOWLEDGMENT
COUNTY OF BELL §

BEFORE ME, a Notary Public, on this day personally appeared, Teddy Clevenger, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the Superintendent of the Bartlett Independent School District; that he was authorized to execute such instrument; and acknowledged that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 22nd day of January, 2024.





Notary Public, State of Texas

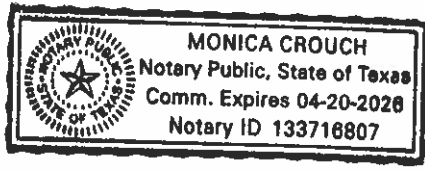


EXHIBIT A
Meets and Bounds Description of Property to be Annexed.

City of Bartlett
W. C. Wilson Survey, A-856 – Bell County, Texas
Annexation Tract – 17.91 Acres

Fieldnotes to that certain lot, tract or parcel being 17.91 acres, more or less, situated adjacent to the City of Bartlett, W. C. Wilson Survey, A-856, Bell County, Texas, and being comprised of the following tracts: Block 21 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 22 (conveyed to Bartlett ISD in Volume 856, Page 322), Block 23 (conveyed to Bartlett ISD in Volume 856, Page 322), and Block 24 (conveyed to Bartlett ISD in Volume 904, Page 83) in Bartlett's 4th Addition to the City of Bartlett, of record in Volume 249, Page 36; a portion of 3rd Street (aka Beckman Street) situated between the southern limits of Block 20 & 21 and Block 22 & 23, as shown on the aforesaid Bartlett's 4th Addition; A portion of Allen Street situated between the eastern limits of Block 21 & Block 22 and the western limits of Blocks 19 & 24, as shown on Bartlett's 4th Addition plat; A portion of a 60 foot wide unnamed street adjoining the eastern side of Blocks 21 & 22, a 0.509 acre portion of said street which was conveyed to Bartlett ISD in Document Number 202341156 and as shown on the plat of Bartlett's 4th Addition; A portion of an unnamed 60 foot wide street adjoining Blocks 22 & 23, of which 0.427 acre was conveyed to Bartlett ISD in Document Number 202341157, and shown on Bartlett's 4th Addition plat; A 0.137 acre tract conveyed to Bartlett ISD in Document Number 202341157. A called 4.59 acre tract (found upon resurvey to contain 4.522 acres) as conveyed to Bartlett ISD in Volume 3247, Page 407, all of record in the Bell County, Texas, Deed Records, to which references are hereby made to for any and all purposes. Said tract described as follows, to wit:

BEGINNING at a point in an existing manhole for the northwest corner of the aforesaid 4.59 acre tract, in the apparent eastern residual line of a called 9.42 acre tract conveyed to William Schleede, et al by deed of record in Volume 905, Page 430, and in a southern residual line of the Will O'Bell tract of record in Volume 1082, Page 532. Said point bears N16°08'19"E 140.00 feet and S73°48'11"E 89.36 feet (called 90.00 feet in the 4.59 acre tract description) from an iron pipe found for reference to the 4.59 acre tract. Said pipe being in the northern right of way of Clearman Street (80' r.o.w.), of record in Volume 1265, Page 807, and at the southeastern corner of the Gilbert Rodriguez tract, of record as Document Number 201847770.

THENCE SOUTH 73°48'11" EAST 680.28 feet, along the northern line of said 4.59 acre tract and said southern residual line, to a ½" iron rod (capped Goodwin-Lasiter) set for the northeast corner of the 4.59 acre tract and an "ell" corner of the Will O'Bell tract;

THENCE SOUTH 16°09'37" WEST 1038.21 feet, with the eastern line of said 4.59 acre tract, said western residual line, the eastern line of the referenced 0.137 acre tract, and picking up the eastern line of the referenced 0.509 acre tract, to a capped ½" iron rod set for the southeastern corner of the 0.509 acre tract. Same being in the eastern projection of the southern line of Block 21 of Bartlett's 4th Addition;

THENCE NORTH 73°50'23" WEST, in part with the southern line of the 0.509 acre tract, passing at 29.97 feet a mag nail for the southwest corner of the 0.509 acre tract, picking up the southern line of Block 21 and the northern right of way of Davilla Street (80' r.o.w.), passing at 359.94 feet a capped 1/2" iron rod set at the southwestern corner of Block 21, crossing 3rd Street at a total distance of 419.94 feet to a capped ½" iron rod set for corner at the southeastern corner of Block 20 (conveyed to Bartlett ISD by deeds of record in Volume 416, Page 243, and Volume 415, Page 465) and in the intersection of the western right of way of 3rd Street with the northern right of way of Davilla Street (80' r.o.w.);

THENCE NORTH 16°09'37" EAST 300.00 feet, along the eastern line of Block 20, the western right of way of 3rd Street and following the existing annexation line, of record in Volume 648, Page 102), to a capped ½" iron rod set for the northeastern corner of Block 20 in the

intersection of said we
r.o.w.);

it (60'

THENCE NORTH 73°50'23" WEST, with said current annexation line, along the northern line of Block 20, passing at 300.00 feet a capped ½" iron rod set at the northwestern corner of Block 20, crossing 2nd Street (60' r.o.w.), passing at 360.00 feet a capped ½" iron rod set for the northeastern corner of Block 19, picking up the northern line of Block 19 and continuing a total distance of 660.00 feet to a capped ½" iron rod set for the northwestern corner of Block 19 as conveyed to the City of Bartlett in Volume 242, Page 494. Said point being in the intersection of the southern right of way of Allen Street with the eastern right of way of 1st Street (aka Robinson Street, a 70' right of way);

THENCE NORTH 16°09'37" EAST, departing from the referenced annexation, crossing Allen Street and picking up the western line of Block 23, as conveyed to Bartlett ISD by deed of record in Volume 904, Page 83, passing at 60.00 feet a capped ½" iron rod set for the southwestern corner of Block 24, passing at 210.00 feet a capped ½" iron rod set in the southern limit of an alley and at the northwestern corner of Lot 5, in Block 24, passing at 230.00 feet a capped ½" iron rod set in the northern limit of said alley and at the southwestern corner of Lot 1, Block 24, continuing a total distance of 380.00 feet to a point for the northwestern corner of Block 24 in the apparent southern line of the Good Rentals, LLC tract, of record as Document Number 201500044668 and 201500044667;

THENCE SOUTH 73°50'23" EAST, along the northern line of Block 24, the apparent southern residual line of the referenced 9.42 acre tract, and the southern limit of the referenced 60 foot wide street, passing at 300.00 feet a capped ½" iron rod set for the northeastern corner of Block 24 in the western right of way of 2nd Street, crossing 2nd Street at 360.00 feet pass a capped ½" iron rod set for the northwestern corner of Block 23, conveyed to Bartlett ISD in Volume 856, Page 322, and continuing a total distance of 399.79 feet to a capped ½" iron rod set for corner in the northern line of Lot 1, Block 23. Said point being in the southern projection of the western line of the referenced 4.59 acre tract;

THENCE NORTH 16°08'19" EAST, crossing said 60 foot wide road, along said western projection, and the aforementioned apparent eastern residual line, passing at 30.00 feet a point for the southwestern corner of the referenced Bartlett ISD .0.427 acre tract, from which a capped ½" iron bears S73°50'23"E 5.00 feet, passing at 60.00 feet a capped ½" iron rod for the northwestern corner of said 0.427 acre tract and the southwestern corner of the referenced Bartlett ISD 0.137 acre tract, passing at 69.02 feet a ½" iron rod found for the southwestern corner of the referenced 4.59 acre tract, continuing a total distance of 358.65 feet, to the Point of Beginning and containing 17.91 acres, more or less, as shown on the accompanying survey plat of even date herewith.

Bearings are NAD 83 Texas Central Zone (4203) grid values. All distances are surface.



Kirk Raymond, R.P.L.S. 4957
GLS - TBPELS Firm 10110900
Bryan, Texas
October 16, 2023



**MASTER SERVICES AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
TASK ORDER EDITION
CONTRACT NO. 24-01-MSA**

THIS IS AN AGREEMENT effective as of January 23, 2024 (“Effective Date”) between City of Bartlett, TX “Owner” or “City”) and Gessner Engineering, LLC (“Engineer”).

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer’s services (“Services”) will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided.
- B. The general format of a Task Order is shown in Attachment 1 to this Agreement.
- C. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- D. A Task Order will be effective when executed by Owner and Engineer. Engineer shall not perform under any prospective Task Order unless and until a Task Order is executed by Owner and Engineer.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order. When Services under a Task Order are eighty percent (80 %) complete, Engineer shall provide written notice to Owner’s Designated Representative (1) certifying that Engineer will complete the scope of Services for the amount of the Task Order and in the time required by the Task Order; or (2) explaining why Engineer is unable or unwilling to make such certification.

When a Task Order includes more than one phase of Services, Engineer shall provide the notice at eighty percent (80%) completion of each phase.

- C. Changes in an approved Task Order may be initiated by the Engineer or Owner by a Task Order Amendment. The Task Order Amendment shall: (i) describe a change in scope, including Services to be added, changed, or deleted; (ii) state the additional cost or cost reduction; and (iii) described schedule changes, if any. A Task Order Amendment will be effective when executed by Owner and Engineer. Engineer shall not perform under any prospective Task Order Amendment unless and until the Task Order Amendment is executed by Owner and Engineer. Oral amendments to a Task Order will have no effect, except in cases of an emergency threatening personal injury or property damage. In such case, the Owner and Engineer will document the Task Order Amendment in writing, as soon as possible.
- D. If Engineer becomes aware that a change concerning a Specific Project may require a Task Order Amendment to increase the scope of Services, request additional cost or request additional time, Engineer shall provide written notice to the Owner's Designated Representative within ten (10) days. If Engineer determines that a Task Order Amendment is required as a result of the change, Engineer shall initiate a Task Order Amendment within ten (10) days.

1.03 *Task Order Amount.* Engineer shall provide a not-to-exceed amount to perform the scope of Services included in the Task Order. A Level of Effort Table will be submitted to Owner to document and support Engineer's calculation of the not to exceed amount, including but not limited to a Standard Hourly Rate Schedule and a Reimbursable Expense Schedule.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General.* Owner shall have the responsibilities set forth herein, in this Agreement and in a Task Order.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term.* This Agreement shall be effective and applicable to Task Orders issued hereunder for three (3) years from the Effective Date of the Agreement.

3.02 *Times for Rendering Services*

- A. The times for performing Services or providing deliverables will be stated in each Task Order. Time is of the essence.
- B. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its Services.
- C. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages resulting from such failure.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 *Invoices – Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with the specific Task Order. Engineer shall submit invoices to Owner on a monthly basis.

4.02 *Payments*

- A. Owner agrees to pay Engineer in accordance with Texas Government Code Chapter 2251. Engineer shall pay all Consultants and other expenses incurred under the Task Order in accordance with Texas Government Code Chapter 2251.
- B. *Compensation Methods.* Engineering Services will be compensated in accordance with one or more of the following methods as specified in the Task Order:
 - 1. *Lump Sum Method.* The Lump Sum will include compensation for Engineer’s services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead and profit. Owner will pay Engineer for reasonable and customary Reimbursable Expenses in addition to the Lump Sum.
 - 2. *Standard Hourly Rates Method.* The cumulative hours charged to the Specific Project is calculated by multiplying each class of Engineer’s employees by the Standard Hourly Rates for each applicable billing class for all Services performed on the Specific Project and Consultant’s charges, if any. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of Customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin of profit. In addition, Owner will pay Engineer for reasonable and customary Reimbursable Expenses.
- C. *Failure to Pay.* If Owner fails to make any payment that is due, Engineer may, after giving seven (7) days written notice to Owner, suspend services under the Task Order until Owner pays the amount due.
- D. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Cost.*

- A. Engineer’s opinions of probable Construction Cost are to be made on the basis of Engineer’s experience and qualifications and represent Engineer’s judgment as an experienced and qualified professional generally familiar with the construction industry. However, Engineer does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer.
- B. Engineer’s opinions of Total Project Costs are to be made on the basis of Engineer’s experience and qualifications and represent Engineer’s judgment as an experienced and qualified professional generally familiar with the construction industry. However,

Engineer does not guarantee that Total Project Costs will not vary from opinions of Total Project Costs prepared by Engineer.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer in a Task Order, Engineer's rights and responsibilities with respect thereto will be governed by the terms of the Task Order.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will conform to standard engineering practices and applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers. Engineer warrants that the professional engineering and related services performed or furnished by Engineer under this Agreement, and Task Order issued under this Agreement, if any, shall meet or exceed such standard of care.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation, except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information, not reasonably known or discoverable by Engineer.
- C. Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and additional Owner-mandated standards, if any, that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by who requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its Services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of

any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

- G. Engineer shall not at any time supervise, direct, or have control over a Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by a Contractor, for security or safety at any Site, for safety precautions and programs incident to a Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the Work.
- H. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- J. Engineer shall at all times be an independent contractor with the sole authority to control and direct the performance of the details of the Services. Engineer shall not purport to be an employee or agent of the City and shall not have any right or power to bind the City to any obligation.
- K. Engineer shall procure and maintain at its expense all licenses and permits necessary to perform Services. Engineer shall require that its employees and Consultants are properly licensed to perform their respective portion of Services.
- L. The Services to be performed under this Agreement shall be performed entirely at Engineer's risk. Engineer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services to be performed under this Agreement. Engineer shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to employees, the Services, endangered species, or the property affected by this Agreement. All damage or loss to any property caused in whole or in part by Engineer, Consultant, or anyone employed by either of them shall be remedied by Engineer.

6.02 *Ownerships of Documents*

- A. City shall have the title to and ownership of all documents produced or developed by Engineer in connection with a Task Order issued pursuant to this Agreement. Documents include publications, plans drawings, designs, specifications, photographs, studies, reports schedules, computer programs, and other data and work product, in any form or media. Owner shall have sole ownership of all copyright interest in all documents to the extent that documents may be copyrighted. Engineer shall deliver all documents to the Owner at completion of the Specific Project under a Task Order, termination of Services under a Task Order, or upon Owner's request. Engineer may retain copies of its work product.

6.03 Insurance

- A. At all times for the term of this Agreement and when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, “Insurance.” Engineer’s failure to purchase and maintain the required insurance shall be grounds for Owner’s termination or suspension of this Agreement or a Task Order.
- B. Engineer shall cause Owner and its elected officials, officers, directors, employees, representatives and volunteers to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project. The additional insured status must cover completed operations as well, and the policy covering completed work must remain in effect until the expiration of the statute of repose. As respects the Workers Compensation policy, the Engineer will waive subrogation in favor of the Owner.
- C. Engineer must complete and forward the required Certificates of Insurance to the Owner when Engineer executes this Agreement as verification of coverage required as indicated. Engineer shall not provide any Services under a Task Order until the required insurance is obtained and until such insurance has been reviewed by the Owner. Approval of insurance by the Owner shall not relieve or decrease the liability of Engineer and shall not be construed to be a limitation of liability on the part of Engineer. Engineer must also complete and forward the required Certificates of Insurance to the Owner whenever a previously identified policy period has expired as verification of continuing coverage.
- D. Engineer’s insurance coverage shall be written by companies licensed and authorized to do business in the State of Texas before the policies are issued and shall be written by companies with A.M. Best rating A VIII or better.
- E. All endorsements naming the Owner as additional insured, waivers, and notices of cancellation, as well as the Certificates of Insurances shall indicate: City of Bartlett, 140 West Clark Street, Bartlett, Texas 76537, ATTN: City Administrator.
- F. The “other insurance” clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. It is agreed that the Engineer’s general liability insurance shall be considered primary with respect to any insurance or self insurance carried by the Owner. The Owner’s insurance shall apply separately to each insured against whom a claim is made and/or lawsuits brought, except with respect to the limits of insured’s liability.
- G. If insurance policies are not written for the specified amounts, Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- H. Owner shall be entitled, upon request and without expense, to receive “certified copies” of policies and policy endorsements and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties or the underwriter on any such policies.

- I. Owner reserves the right to review the insurance requirements during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the Owner. Owner may request, in a Task Order or Task Order Amendment, that Engineer and its Consultants provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner in the Task Order or Task Order Amendment.
- J. Engineer shall not allow any insurance to be cancelled nor permit any insurance to lapse during the term of this Agreement or as required in this Agreement. The policies must contain the following language: “This policy shall not be cancelled or not renewed until after thirty (30) days prior written notice has been given to the additional insured, the City of Bartlett.” In addition, Engineer shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- K. Engineer shall be responsible for premiums, deductibles and self-insured retentions, if any, as stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificates of Insurance.
- L. If Owner’s property is being transported or stored off-site by Engineer, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the Owner’s property.
- M. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of Engineer.
- N. Without limiting any of the other obligations or liabilities of the Engineer, the Engineer shall require each Consultant performing work under a Task Order to maintain during the term of the Task Order, at the Consultant’s expense, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Engineer may include its Consultants as additional insureds on its own coverage as prescribed under these requirements. The Engineer’s Certificate of Insurance shall note in such event that the Consultants are included as additional insureds and that Engineer agrees to provide Workers Compensation for the Consultants and their employees. The Engineer shall obtain and monitor the Certificates of Insurance from each Consultant in order to comply with the insurance requirements. The Engineer must retain the Certificates of Insurance for the duration of the Task Order plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Consultants. The Owner shall be entitled, upon request and without expense, to receive copies of these Certificates of Insurance.
- O. Owner shall require Contractors to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee, and to cause Engineer and its Consultants to be listed as

additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.

6.04 *Suspension and Termination*

A. *Suspension*

1. Owner has the right to suspend all or any portion of the Services to be performed under a Task Order upon ten (10) days written notice to Engineer. Upon receipt of a notice of suspension, Engineer shall:
 - a. immediately suspend Services on the date and to the extent specified in the notice;
 - b. protect and maintain the portion of the Services completed, including the portion of the Services suspended, unless otherwise specifically stated in the notice; and
 - c. continue to perform the Services not suspended.
2. If Owner suspends Services to be performed under a Task Order, Owner shall pay Engineer, as specified in the Task Order, for the Services completed to the date of suspension. Owner will also reimburse Engineer for the following costs, without duplication of any item, to the extent that such costs actually result from such suspension of Services:
 - a. a reasonable standby charge to compensate Engineer for keeping (to the extent required in the notice) its organization and equipment committed to the Services in standby status;
 - b. reasonable costs associated with demobilization of Engineer's facility, forces and equipment; and
 - c. reasonable cost of maintaining and protecting that portion of the Services upon which activities have been suspended.
3. Engineer shall not be entitled to receive any other compensation or reimbursement resulting from a suspension in Services under a Task Order.
4. Upon receipt of notice to restart the suspended portion of Services, Engineer shall immediately resume performance to the extent required in the notice. Within ten (10) days after receipt of notice to resume the suspended portion, the Engineer shall submit a revised schedule for approval by Owner. If, as a result of any suspension, the cost to Engineer of subsequently performing the Services or the time required to perform the Services is changed, Engineer may initiate a Task Order Amendment.

- B. *Termination.* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:
1. For Cause,
 - a. The obligation to provide further services under this Agreement, or under a Task Order, may be terminated by Owner, for cause, upon ten (10) days written notice in the event of substantial failure by Engineer to perform in accordance with this Agreement or any Task Order. This Agreement, or Task Order, will not terminate if the Engineer corrects the failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of the notice. If Engineer fails to cure the default, Owner may provide written notice of termination to Engineer.
 - b. The obligation to provide further services under this Agreement, or under Task Order, may be terminated by Engineer, for cause, upon ten (10) days written notice in the event of substantial failure by Owner to perform in accordance with the terms of this Agreement or any Task Order. This Agreement, or a Task Order, will not terminate if the Owner corrects the failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of the notice. If Owner fails to cure the default, Engineer may provide written notice of termination to Owner.
 2. For Convenience,
 - a. Owner has the right to terminate a Task Order under this Agreement for convenience at any time by providing ten (10) days written notice to Engineer. Upon receipt of a notice of termination for convenience, Engineer shall:
 - 1) immediately cease providing Services under the Task Order; and
 - 2) protect and maintain the portion of the Services completed, unless otherwise specifically stated in the notice.
 - b. In the event of a termination for convenience, Owner shall pay Engineer, as specified in the Task Order, for the Services completed to the date of termination. Owner shall not be liable for special, incidental, consequential or punitive damages, for loss of anticipated future Services, anticipated profits, administrative costs or overhead on anticipated Services, or other indirect costs as a result of a termination for convenience.

6.05 *Controlling Law*

- A. This Agreement is to be governed by and construed in accordance with Texas law. Owner and Engineer each submit to the exclusive jurisdiction of the state and federal courts in Williamson County, Texas. Owner does not waive the defense of sovereign immunity.

6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. There are no third-party beneficiaries to this Agreement. The provisions of this Agreement do not, and shall not be construed to, create any legal or equitable right, remedy or claim enforceable by any person or entity other than Owner and Engineer. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
- D. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.07 *Dispute Resolution*

- A. If a dispute arises under this Agreement or a Task Order, Owner and Engineer agree to negotiate the dispute between them in good faith for a period of 30 days from the date of written notice of the dispute.
- B. If the Parties fail to resolve a dispute through negotiation under Paragraph 6.07.A, then Owner and Engineer agree that they shall submit any and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement or a Task Order to mediation.
- C. If mediation is unsuccessful in resolving a dispute, then any and all unsettled claims, counterclaims, and other matters in question between Owner and Engineer arising out of or relating to this Agreement or Task Order (a) may be submitted to binding arbitration by written agreement of the Parties, or (b) may be filed by either Party in a court of competent jurisdiction.
- D. Upon Owner's request, Engineer shall proceed with performance of Services pending final resolution of a dispute arising under this Agreement or a Task Order.

6.08 *Environmental Condition of Site*

- A. With respect to each Task Order, Specific Project, and Site:
1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
 2. Owner represents to Engineer that to its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
 3. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 4. If Engineer or any other Party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until the Site is in full compliance with applicable Laws and Regulations.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under a Task Order, then the Engineer shall have the option of (a) submitting a Task Order Amendment for adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause.

6.09 *Indemnification*

- A. **General Obligation to Indemnify and Defend. TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, AND CAUSES OF ACTION, OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY TASK ORDER, OR ANY SPECIFIC PROJECT, TO THE EXTENT CAUSED BY 1) THE NEGLIGENT ACT OR OMISSION OR WILLFUL ACTS OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS OR 2) MATERIAL BREACH OF THIS AGREEMENT OR TASK ORDER. ENGINEER FURTHER AGREES TO DEFEND, AT ITS OWN**

EXPENSE, ON BEHALF OF THE OWNER AND IN THE NAME OF THE OWNER, SUITS AND PROCEEDINGS INSTITUTED AGAINST OWNER TO WHICH THE INDEMNITY OBLIGATION APPLIES, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION.

B. Intellectual Property.

- 1. ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, CLAIMS, LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, CAUSES OF ACTION OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, TO THE EXTENT CAUSED BY ALLEGED INFRINGEMENT OF PATENT OR COPYRIGHT OF THE UNITED STATES OR OF ANY TRADEMARK OR TRADE SECRET PROTECTED BY EITHER FEDERAL OR STATE LAW BY ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS. ENGINEER SHALL, AT ITS OWN EXPENSE, DEFEND SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION, AND SHALL ABIDE BY RESULTING DECREES AND COMPROMISES.**
- 2. IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT, BY GIVING A SATISFACTORY BOND OR OTHERWISE, TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF THE SERVICES ARE HELD TO CONSTITUTE AN INFRINGEMENT, AND PERMANENTLY ENJOINED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT TO SECURE FOR OWNER A LICENSE AT ENGINEER'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF ENGINEER IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, ENGINEER SHALL, AT ITS OWN EXPENSE AND WITHOUT IMPAIRING PERFORMANCE REQUIREMENTS, EITHER PROVIDE NON-INFRINGEMENT REPLACEMENT OR MODIFY THE SERVICES TO ELIMINATE THE INFRINGEMENT. IN ADDITION TO INDEMNIFYING AND SAVING OWNER HARMLESS, ENGINEER SHALL REIMBURSE OWNER FOR**

**ANY COSTS INCURRED AS A RESULT OF THE UNAVAILABILITY OF
THE INFRINGING ITEM OR ITS NONINFRINGING REPLACEMENT.**

- C. Engineer's indemnity obligations are independent covenants and shall survive completion of or termination of the Agreement or any claimed breach of the Agreement.
- D. Owner shall promptly notify Engineer, in writing, of receipt of notice of the commencement or threatened commencement of any civil, administrative or investigative action or proceeding involving a claim for which Owner seeks indemnification. No failure to so notify Engineer shall relieve Engineer of its obligations under this Agreement except to the extent that Engineer can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the Owner, but no later than ten (10) days before the date on which any response to a complaint or summons is due, Engineer shall assume control of the defense and/or resolution of the claim.
- E. *Release.* Engineer assumes full responsibility for the Services to be performed and releases, relinquishes, and discharges the City, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either Party or other third parties) and any loss of or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with Services performed under this Agreement or a Task Order. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Engineer, any Consultant, or any person or organization directly or indirectly employed by any of them to perform or furnish Services under this Agreement.

6.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing and sent to the Designated Representative by personal delivery, facsimile, registered or certified mail postage prepaid, or a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Owner and Engineer.
- D. *Waiver.* A Party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Applicability to Task Orders.* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified in the Task Order. In the event of a conflict between this Agreement and a Task Order, the

conflicting provisions of the Task Order shall take precedence for that Task Order. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

- F. *Non-Exclusive Agreement.* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other owners for the same or different services contemplated hereunder.
- G. *Certification Regarding Boycotting Israel.* Pursuant to Chapter 2271, Texas Government Code, Engineer certifies that it (1) does not currently boycott Israel; and (2) will not boycott Israel during the term of this Agreement. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- H. *Certification Regarding Business with Certain Countries and Organizations.* Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Engineer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- I. *Certification Regarding Boycotting Energy Companies.* Pursuant to Chapter 2274, Texas Government Code, Engineer certifies that either (1) it is a sole proprietorship or company with fewer than ten (10) employees or (2) it does not currently boycott energy companies and will not boycott energy companies during the Term of this Agreement. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- J. *Certification Regarding Boycotting Firearm and Ammunition Industries.* Pursuant to Chapter 2274, Texas Government Code, Engineer certifies that either (1) it is a sole proprietorship or company with fewer than ten (10) employees or (2) it does not currently boycott firearm and ammunition industries; and will not boycott firearm and ammunition industries during the Term of this Agreement. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the Exhibits or Task Order, or in the following provisions:
 - 1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 - 2. *Additional Services* – Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.

3. *Agreement* – This "Master Services Agreement between Owner and Engineer for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
4. *Application for Payment* – The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services* – Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
7. *Bid* – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents* – The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order* – A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
11. *Construction Agreement* – The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract* – The entire and integrated written agreement between Owner and a Contractor concerning the Work.
13. *Construction Cost* – The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of

services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between Owner and a Contractor, Addenda (which pertain to the Contract Documents), a contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price* – The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times* – The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment, and (iii) meet any other specified milestone.
18. *Contractor* – An individual or entity with whom Owner enters into a Construction Agreement for a Specific Project.
19. *Correction Period* – The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

21. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
22. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement* – The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order* – The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Field Order* – A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
27. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project. The “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Document Committee (Document No. C-700, 2007 Edition) will be used unless both Parties mutually agree in a Task Order to use other General Conditions.
28. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
29. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

33. *Record Drawings* – The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
34. *Reimbursable Expenses* – Reasonable and customary expenses approved by Owner in a Task Order and incurred directly by Engineer in connection with the performing or furnishing of Services for a Specific Project for which Owner shall pay Engineer.
35. *Resident Project Representative* – The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative will be as set forth in each Task Order.
36. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
38. *Site* – Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
39. *Specifications* – That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
40. *Specific Project* – An undertaking of Owner as set forth in a Task Order.
41. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
42. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.

43. *Task Order* – A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
44. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner.
45. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided by a Contractor under Contract Documents for a Specific Project. Work includes and is the result of a Contractor performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the applicable Contract Documents.
46. *Work Change Directive* – A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
47. *Written Amendment* – A written amendment of the Contract Documents signed by Owner and a Contractor on or after the Effective Date of a Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits

| Included? (Yes or No) | Exhibit Letter | Exhibit Title |
|--------------------------|-------------------|--|
| Yes | | Attachment 1 – Task Order Form |
| No | A | Schedule of Engineer's Services |
| No | B | Schedule of Owner's Responsibilities |
| No | C | Payments to Engineer for Services and Reimbursable Expenses |
| No | D | Schedule of Duties, Responsibilities and Limitations of Authority of Resident Project Representative |
| No | E | Notice of Acceptability of Work (Form) |
| No | F | Construction Cost Limit |

| Included? (Yes or No) | Exhibit Letter | Exhibit Title |
|--------------------------|-------------------|--------------------------------|
| Yes | G | Insurance |
| No | H | Dispute Resolution |
| No | I | Allocation of Risks |
| No | J | Reserved |
| Yes | K | Amendment to Task Order (Form) |

8.02 *Total Agreement*

- A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the Services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective Party. Each Task Order shall likewise designate representatives of the Parties. The Designated Representative may be changed with written notice to the Designated Representative of the other Party.

IN WITNESS WHEREOF, the Parties execute this Agreement.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: Sarah Korpita

Title: Mayor, City of Bartlett

Title: Vice President, Client Experience

Engineer License or Firm's
Certificate No. (if required by law) _____

State of: Texas

Date Signed: _____

Date Signed: January 16, 2024

ATTEST:

APPROVED AS TO FORM:

_____, City Secretary

City Attorney

DESIGNATED REPRESENTATIVE
(see Paragraph 8.03.A):

Title: _____
City Administrator, Mayra Cantu

Phone Number: 737-667-0156

E-Mail _____
Address: mayra.cantu@bartlett-tx.us

Address for giving notices:

140 W. Clark Street

Bartlett, TX 76537

DESIGNATED REPRESENTATIVE
(see Paragraph 8.03.A):

Sarah Korpita
Title: Vice President Client Experience, Gessner Engineering

Phone Number: 936.727.0058

E-Mail skorpita@gessnereng.com

Address: _____

Address for giving notices:

401 West 26th Street

Bryan, Texas 77803

TASK ORDER

Task Order No. xxx-xx-xxx,
consisting of _____ pages.

Task Order

In accordance with paragraph 1.01 of the Master Services Agreement between Owner and XXXXXX. ("Engineer") for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. **Specific Project Data**

A. Title: _____

B. Description: _____

C. City of Bartlett Project Number: _____

D. Master Services Agreement, Contract Number: XX-XXX-MSA

2. **Services of Engineer**

[Incorporate applicable text or paragraphs from Exhibit A, Schedule of Engineer's Services -- either by reference or by insertion here. Incorporate Exhibits D and/or F if applicable -- either by reference or by insertion here. Supplement or modify as needed for this specific Task Order.]

3. **Owner's Responsibilities**

Owner shall have those responsibilities set forth in the Agreement subject to the following: *[Here incorporate applicable text or paragraphs for this Specific Project from Exhibit B, Schedule of Owner's Responsibilities – either by reference or by insertion here.]*

4. **Times for Rendering Services**

| <u>Phase</u> | <u>Completion Date</u> |
|--------------|------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

TASK ORDER

5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

| <i>Category of Services</i> | <i>Compensation Method</i> | <i>Lump Sum or Not to Exceed Amount of Compensation for Services</i> |
|--|---|--|
| <i>Basic Services (Study and Report, Preliminary Design, Final Design, Bidding or Negotiating, Construction Phase)</i> | <i>A. Lump Sum B. Standard Hourly Rates C. [Insert any other compensation method]</i> | |
| <i>Resident Project Representative and Post- Construction Phase Services</i> | <i>A. Lump Sum B. Standard Hourly Rates C. [Insert any other compensation method]</i> | |
| <i>Additional Services</i> | <i>A. Lump Sum B. Standard Hourly Rates C. [Insert any other compensation method]</i> | |

B. The terms of payment are set forth in Article 4 of the Agreement unless modified in this Task Order.

6. **Consultants:**

7. **Other Modifications to Agreement:**

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. **Attachments:**

9. **Documents Incorporated By Reference:** The Agreement effective _____.

[Supplement with reference to other Documents, if appropriate.]

TASK ORDER

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, 20_____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. _____

State of: Texas

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

TASK ORDER

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: 140 W Clark St.
Bartlett, TX 76537

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _

Phone: _

Fax: _

Fax: _

EXHIBIT G, consisting of 1 page, referred to in and part of the Master Services **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Insurance

Paragraph 6.03 of the Agreement is amended and supplemented to include the following agreement of the parties.

The limits for Engineer's insurance required by paragraph 6.03 of the Agreement are as follows:

Workers' Compensation with statutory limits. Engineer shall certify in writing that the Engineer provides Workers' Compensation Insurance for all of Engineer's employees involved in the Project. In addition, Engineer shall meet each stipulation required by the Texas Workers Compensation Commission. If you have questions concerning the requirements, you are instructed to contact the TID at (800) 252-3439.

Employers Liability with minimum limits for bodily injury: a) by accident, \$250,000 per each accident b) by disease, \$250,000 per employee with a per policy aggregate of \$500,000.

Commercial General Liability including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate. If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than 24 months following the last to occur: 1) expiration of this Agreement; or 2) Engineer's completion, and Owner's acceptance, of all Services provided under any and all Task Orders, if any, approved pursuant to the Agreement. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Agreement.

Business Automobile Liability covering owned, hired, and non-owned vehicles, with minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.

Professional Liability \$2,000,000 per claim. With written approval of the City Administrator, a Claims Made Policy may be accepted for Professional Liability Insurance.

EXHIBIT K, consisting of ____ pages, referred to in and part of the Master Services **Agreement between Owner and Professional Engineer for Professional Services – Task Order Edition** dated ____.

_____ **Amendment to Task Order No.** _____

1. Specific Project Data:

A. Title: _____

B. Description: _____

C. City of Bartlett Project Number: _____

D. City of Bartlett General Ledger Account No.: _____

E. City of Bartlett Purchase Order No.: _____

F. Master Services Agreement, Contract Number: 23-0078-MSA

2. Nature of Amendment *[Check those that are applicable and delete those that are inapplicable.]*

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- Modifications to other terms and conditions of the Task Order

3. Description of Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this Amendment. Refer to paragraph numbers used in the Task Order, the Agreement, or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments. Delete this paragraph after completing form.]

- A. Engineer shall perform the following Additional Services:
- B. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous Amendments, if any, is modified as follows:
- C. The responsibilities of Owner are modified as follows:
- D. For the Additional Services or the modifications to Services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- E. The schedule for rendering Services is modified as follows:
- F. Other portions of the Task Order (including previous Amendments, if any) are modified as follows:

4. Attachments [if any]:

Terms and Conditions: Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and the Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Task Order Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's Certificate No. _____

State of: Texas

APPROVED AS TO FORM:

Doug Montgomery
City Attorney

**MASTER SERVICES AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
TASK ORDER EDITION
CONTRACT NO. 24-02-MSA**

THIS IS AN AGREEMENT effective as of January 23, 2024 (“Effective Date”) between City of Bartlett, TX (“Owner” or “City”) and Kasberg, Patrick & Associates, LP (“Engineer”).

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer’s services (“Services”) will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided.
- B. The general format of a Task Order is shown in Attachment 1 to this Agreement.
- C. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- D. A Task Order will be effective when executed by Owner and Engineer. Engineer shall not perform under any prospective Task Order unless and until a Task Order is executed by Owner and Engineer.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order. When Services under a Task Order are eighty percent (80 %) complete, Engineer shall provide written notice to Owner’s Designated Representative (1) certifying that Engineer will complete the scope of Services for the amount of the Task Order and in the time required by the Task

Order; or (2) explaining why Engineer is unable or unwilling to make such certification. When a Task Order includes more than one phase of Services, Engineer shall provide the notice at eighty percent (80%) completion of each phase.

- C. Changes in an approved Task Order may be initiated by the Engineer or Owner by a Task Order Amendment. The Task Order Amendment shall: (i) describe a change in scope, including Services to be added, changed, or deleted; (ii) state the additional cost or cost reduction; and (iii) described schedule changes, if any. A Task Order Amendment will be effective when executed by Owner and Engineer. Engineer shall not perform under any prospective Task Order Amendment unless and until the Task Order Amendment is executed by Owner and Engineer. Oral amendments to a Task Order will have no effect, except in cases of an emergency threatening personal injury or property damage. In such case, the Owner and Engineer will document the Task Order Amendment in writing, as soon as possible.
- D. If Engineer becomes aware that a change concerning a Specific Project may require a Task Order Amendment to increase the scope of Services, request additional cost or request additional time, Engineer shall provide written notice to the Owner's Designated Representative within ten (10) days. If Engineer determines that a Task Order Amendment is required as a result of the change, Engineer shall initiate a Task Order Amendment within ten (10) days.

1.03 *Task Order Amount.* Engineer shall provide a not-to-exceed amount to perform the scope of Services included in the Task Order. A Level of Effort Table will be submitted to Owner to document and support Engineer's calculation of the not to exceed amount, including but not limited to a Standard Hourly Rate Schedule and a Reimbursable Expense Schedule.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General.* Owner shall have the responsibilities set forth herein, in this Agreement and in a Task Order.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term.* This Agreement shall be effective and applicable to Task Orders issued hereunder for three (3) years from the Effective Date of the Agreement.

3.02 *Times for Rendering Services*

- A. The times for performing Services or providing deliverables will be stated in each Task Order. Time is of the essence.
- B. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its Services.
- C. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages resulting from such failure.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 *Invoices – Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with the specific Task Order. Engineer shall submit invoices to Owner on a monthly basis.

4.02 *Payments*

- A. Owner agrees to pay Engineer in accordance with Texas Government Code Chapter 2251. Engineer shall pay all Consultants and other expenses incurred under the Task Order in accordance with Texas Government Code Chapter 2251.
- B. *Compensation Methods.* Engineering Services will be compensated in accordance with one or more of the following methods as specified in the Task Order:
 - 1. *Lump Sum Method.* The Lump Sum will include compensation for Engineer’s services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead and profit. Owner will pay Engineer for reasonable and customary Reimbursable Expenses in addition to the Lump Sum.
 - 2. *Standard Hourly Rates Method.* The cumulative hours charged to the Specific Project is calculated by multiplying each class of Engineer’s employees by the Standard Hourly Rates for each applicable billing class for all Services performed on the Specific Project and Consultant’s charges, if any. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of Customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin of profit. In addition, Owner will pay Engineer for reasonable and customary Reimbursable Expenses.
- C. *Failure to Pay.* If Owner fails to make any payment that is due, Engineer may, after giving seven (7) days written notice to Owner, suspend services under the Task Order until Owner pays the amount due.
- D. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Cost.*

- A. Engineer’s opinions of probable Construction Cost are to be made on the basis of Engineer’s experience and qualifications and represent Engineer’s judgment as an experienced and qualified professional generally familiar with the construction industry. However, Engineer does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer.
- B. Engineer’s opinions of Total Project Costs are to be made on the basis of Engineer’s experience and qualifications and represent Engineer’s judgment as an experienced and qualified professional generally familiar with the construction industry. However,

Engineer does not guarantee that Total Project Costs will not vary from opinions of Total Project Costs prepared by Engineer.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer in a Task Order, Engineer's rights and responsibilities with respect thereto will be governed by the terms of the Task Order.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will conform to standard engineering practices and applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers. Engineer warrants that the professional engineering and related services performed or furnished by Engineer under this Agreement, and Task Order issued under this Agreement, if any, shall meet or exceed such standard of care.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation, except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information, not reasonably known or discoverable by Engineer.
- C. Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and additional Owner-mandated standards, if any, that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by who requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its Services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of

any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

- G. Engineer shall not at any time supervise, direct, or have control over a Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by a Contractor, for security or safety at any Site, for safety precautions and programs incident to a Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the Work.
- H. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- J. Engineer shall at all times be an independent contractor with the sole authority to control and direct the performance of the details of the Services. Engineer shall not purport to be an employee or agent of the City and shall not have any right or power to bind the City to any obligation.
- K. Engineer shall procure and maintain at its expense all licenses and permits necessary to perform Services. Engineer shall require that its employees and Consultants are properly licensed to perform their respective portion of Services.
- L. The Services to be performed under this Agreement shall be performed entirely at Engineer's risk. Engineer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services to be performed under this Agreement. Engineer shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to employees, the Services, endangered species, or the property affected by this Agreement. All damage or loss to any property caused in whole or in part by Engineer, Consultant, or anyone employed by either of them shall be remedied by Engineer.

6.02 *Ownerships of Documents*

- A. City shall have the title to and ownership of all documents produced or developed by Engineer in connection with a Task Order issued pursuant to this Agreement. Documents include publications, plans drawings, designs, specifications, photographs, studies, reports schedules, computer programs, and other data and work product, in any form or media. Owner shall have sole ownership of all copyright interest in all documents to the extent that documents may be copyrighted. Engineer shall deliver all documents to the Owner at completion of the Specific Project under a Task Order, termination of Services under a Task Order, or upon Owner's request. Engineer may retain copies of its work product.

6.03 Insurance

- A. At all times for the term of this Agreement and when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, “Insurance.” Engineer’s failure to purchase and maintain the required insurance shall be grounds for Owner’s termination or suspension of this Agreement or a Task Order.
- B. Engineer shall cause Owner and its elected officials, officers, directors, employees, representatives and volunteers to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project. The additional insured status must cover completed operations as well, and the policy covering completed work must remain in effect until the expiration of the statute of repose. As respects the Workers Compensation policy, the Engineer will waive subrogation in favor of the Owner.
- C. Engineer must complete and forward the required Certificates of Insurance to the Owner when Engineer executes this Agreement as verification of coverage required as indicated. Engineer shall not provide any Services under a Task Order until the required insurance is obtained and until such insurance has been reviewed by the Owner. Approval of insurance by the Owner shall not relieve or decrease the liability of Engineer and shall not be construed to be a limitation of liability on the part of Engineer. Engineer must also complete and forward the required Certificates of Insurance to the Owner whenever a previously identified policy period has expired as verification of continuing coverage.
- D. Engineer’s insurance coverage shall be written by companies licensed and authorized to do business in the State of Texas before the policies are issued and shall be written by companies with A.M. Best rating A VIII or better.
- E. All endorsements naming the Owner as additional insured, waivers, and notices of cancellation, as well as the Certificates of Insurances shall indicate: City of Bartlett, 140 West Clark Street, Bartlett, Texas 76537, ATTN: City Administrator.
- F. The “other insurance” clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. It is agreed that the Engineer’s general liability insurance shall be considered primary with respect to any insurance or self insurance carried by the Owner. The Owner’s insurance shall apply separately to each insured against whom a claim is made and/or lawsuits brought, except with respect to the limits of insured’s liability.
- G. If insurance policies are not written for the specified amounts, Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- H. Owner shall be entitled, upon request and without expense, to receive “certified copies” of policies and policy endorsements and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties or the underwriter on any such policies.

- I. Owner reserves the right to review the insurance requirements during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the Owner. Owner may request, in a Task Order or Task Order Amendment, that Engineer and its Consultants provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner in the Task Order or Task Order Amendment.
- J. Engineer shall not allow any insurance to be cancelled nor permit any insurance to lapse during the term of this Agreement or as required in this Agreement. The policies must contain the following language: “This policy shall not be cancelled or not renewed until after thirty (30) days prior written notice has been given to the additional insured, the City of Bartlett.” In addition, Engineer shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- K. Engineer shall be responsible for premiums, deductibles and self-insured retentions, if any, as stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificates of Insurance.
- L. If Owner’s property is being transported or stored off-site by Engineer, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the Owner’s property.
- M. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of Engineer.
- N. Without limiting any of the other obligations or liabilities of the Engineer, the Engineer shall require each Consultant performing work under a Task Order to maintain during the term of the Task Order, at the Consultant’s expense, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Engineer may include its Consultants as additional insureds on its own coverage as prescribed under these requirements. The Engineer’s Certificate of Insurance shall note in such event that the Consultants are included as additional insureds and that Engineer agrees to provide Workers Compensation for the Consultants and their employees. The Engineer shall obtain and monitor the Certificates of Insurance from each Consultant in order to comply with the insurance requirements. The Engineer must retain the Certificates of Insurance for the duration of the Task Order plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Consultants. The Owner shall be entitled, upon request and without expense, to receive copies of these Certificates of Insurance.
- O. Owner shall require Contractors to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee, and to cause Engineer and its Consultants to be listed as

additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.

6.04 *Suspension and Termination*

A. *Suspension*

1. Owner has the right to suspend all or any portion of the Services to be performed under a Task Order upon ten (10) days written notice to Engineer. Upon receipt of a notice of suspension, Engineer shall:
 - a. immediately suspend Services on the date and to the extent specified in the notice;
 - b. protect and maintain the portion of the Services completed, including the portion of the Services suspended, unless otherwise specifically stated in the notice; and
 - c. continue to perform the Services not suspended.
2. If Owner suspends Services to be performed under a Task Order, Owner shall pay Engineer, as specified in the Task Order, for the Services completed to the date of suspension. Owner will also reimburse Engineer for the following costs, without duplication of any item, to the extent that such costs actually result from such suspension of Services:
 - a. a reasonable standby charge to compensate Engineer for keeping (to the extent required in the notice) its organization and equipment committed to the Services in standby status;
 - b. reasonable costs associated with demobilization of Engineer's facility, forces and equipment; and
 - c. reasonable cost of maintaining and protecting that portion of the Services upon which activities have been suspended.
3. Engineer shall not be entitled to receive any other compensation or reimbursement resulting from a suspension in Services under a Task Order.
4. Upon receipt of notice to restart the suspended portion of Services, Engineer shall immediately resume performance to the extent required in the notice. Within ten (10) days after receipt of notice to resume the suspended portion, the Engineer shall submit a revised schedule for approval by Owner. If, as a result of any suspension, the cost to Engineer of subsequently performing the Services or the time required to perform the Services is changed, Engineer may initiate a Task Order Amendment.

- B. *Termination.* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:
1. For Cause,
 - a. The obligation to provide further services under this Agreement, or under a Task Order, may be terminated by Owner, for cause, upon ten (10) days written notice in the event of substantial failure by Engineer to perform in accordance with this Agreement or any Task Order. This Agreement, or Task Order, will not terminate if the Engineer corrects the failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of the notice. If Engineer fails to cure the default, Owner may provide written notice of termination to Engineer.
 - b. The obligation to provide further services under this Agreement, or under Task Order, may be terminated by Engineer, for cause, upon ten (10) days written notice in the event of substantial failure by Owner to perform in accordance with the terms of this Agreement or any Task Order. This Agreement, or a Task Order, will not terminate if the Owner corrects the failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of the notice. If Owner fails to cure the default, Engineer may provide written notice of termination to Owner.
 2. For Convenience,
 - a. Owner has the right to terminate a Task Order under this Agreement for convenience at any time by providing ten (10) days written notice to Engineer. Upon receipt of a notice of termination for convenience, Engineer shall:
 - 1) immediately cease providing Services under the Task Order; and
 - 2) protect and maintain the portion of the Services completed, unless otherwise specifically stated in the notice.
 - b. In the event of a termination for convenience, Owner shall pay Engineer, as specified in the Task Order, for the Services completed to the date of termination. Owner shall not be liable for special, incidental, consequential or punitive damages, for loss of anticipated future Services, anticipated profits, administrative costs or overhead on anticipated Services, or other indirect costs as a result of a termination for convenience.

6.05 *Controlling Law*

- A. This Agreement is to be governed by and construed in accordance with Texas law. Owner and Engineer each submit to the exclusive jurisdiction of the state and federal courts in Williamson County, Texas. Owner does not waive the defense of sovereign immunity.

6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. There are no third-party beneficiaries to this Agreement. The provisions of this Agreement do not, and shall not be construed to, create any legal or equitable right, remedy or claim enforceable by any person or entity other than Owner and Engineer. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
- D. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.07 *Dispute Resolution*

- A. If a dispute arises under this Agreement or a Task Order, Owner and Engineer agree to negotiate the dispute between them in good faith for a period of 30 days from the date of written notice of the dispute.
- B. If the Parties fail to resolve a dispute through negotiation under Paragraph 6.07.A, then Owner and Engineer agree that they shall submit any and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement or a Task Order to mediation.
- C. If mediation is unsuccessful in resolving a dispute, then any and all unsettled claims, counterclaims, and other matters in question between Owner and Engineer arising out of or relating to this Agreement or Task Order (a) may be submitted to binding arbitration by written agreement of the Parties, or (b) may be filed by either Party in a court of competent jurisdiction.
- D. Upon Owner's request, Engineer shall proceed with performance of Services pending final resolution of a dispute arising under this Agreement or a Task Order.

6.08 *Environmental Condition of Site*

- A. With respect to each Task Order, Specific Project, and Site:
1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
 2. Owner represents to Engineer that to its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
 3. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 4. If Engineer or any other Party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until the Site is in full compliance with applicable Laws and Regulations.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under a Task Order, then the Engineer shall have the option of (a) submitting a Task Order Amendment for adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause.

6.09 *Indemnification*

- A. **General Obligation to Indemnify and Defend. TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, AND CAUSES OF ACTION, OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY TASK ORDER, OR ANY SPECIFIC PROJECT, TO THE EXTENT CAUSED BY 1) THE NEGLIGENT ACT OR OMISSION OR WILLFUL ACTS OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS OR 2) MATERIAL BREACH OF THIS AGREEMENT OR TASK ORDER. ENGINEER FURTHER AGREES TO DEFEND, AT ITS OWN**

EXPENSE, ON BEHALF OF THE OWNER AND IN THE NAME OF THE OWNER, SUITS AND PROCEEDINGS INSTITUTED AGAINST OWNER TO WHICH THE INDEMNITY OBLIGATION APPLIES, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION.

B. Intellectual Property.

- 1. ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, CLAIMS, LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, CAUSES OF ACTION OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, TO THE EXTENT CAUSED BY ALLEGED INFRINGEMENT OF PATENT OR COPYRIGHT OF THE UNITED STATES OR OF ANY TRADEMARK OR TRADE SECRET PROTECTED BY EITHER FEDERAL OR STATE LAW BY ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS. ENGINEER SHALL, AT ITS OWN EXPENSE, DEFEND SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION, AND SHALL ABIDE BY RESULTING DECREES AND COMPROMISES.**
- 2. IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT, BY GIVING A SATISFACTORY BOND OR OTHERWISE, TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF THE SERVICES ARE HELD TO CONSTITUTE AN INFRINGEMENT, AND PERMANENTLY ENJOINED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT TO SECURE FOR OWNER A LICENSE AT ENGINEER'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF ENGINEER IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, ENGINEER SHALL, AT ITS OWN EXPENSE AND WITHOUT IMPAIRING PERFORMANCE REQUIREMENTS, EITHER PROVIDE NON-INFRINGING REPLACEMENT OR MODIFY THE SERVICES TO ELIMINATE THE INFRINGEMENT. IN ADDITION TO INDEMNIFYING AND SAVING OWNER HARMLESS, ENGINEER SHALL REIMBURSE OWNER FOR**

**ANY COSTS INCURRED AS A RESULT OF THE UNAVAILABILITY OF
THE INFRINGING ITEM OR ITS NONINFRINGING REPLACEMENT.**

- C. Engineer's indemnity obligations are independent covenants and shall survive completion of or termination of the Agreement or any claimed breach of the Agreement.
- D. Owner shall promptly notify Engineer, in writing, of receipt of notice of the commencement or threatened commencement of any civil, administrative or investigative action or proceeding involving a claim for which Owner seeks indemnification. No failure to so notify Engineer shall relieve Engineer of its obligations under this Agreement except to the extent that Engineer can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the Owner, but no later than ten (10) days before the date on which any response to a complaint or summons is due, Engineer shall assume control of the defense and/or resolution of the claim.
- E. *Release.* Engineer assumes full responsibility for the Services to be performed and releases, relinquishes, and discharges the City, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either Party or other third parties) and any loss of or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with Services performed under this Agreement or a Task Order. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Engineer, any Consultant, or any person or organization directly or indirectly employed by any of them to perform or furnish Services under this Agreement.

6.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing and sent to the Designated Representative by personal delivery, facsimile, registered or certified mail postage prepaid, or a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Owner and Engineer.
- D. *Waiver.* A Party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Applicability to Task Orders.* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified in the Task Order. In the event of a conflict between this Agreement and a Task Order, the

conflicting provisions of the Task Order shall take precedence for that Task Order. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

- F. *Non-Exclusive Agreement.* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other owners for the same or different services contemplated hereunder.
- G. *Certification Regarding Boycotting Israel.* Pursuant to Chapter 2271, Texas Government Code, Engineer certifies that it (1) does not currently boycott Israel; and (2) will not boycott Israel during the term of this Agreement. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- H. *Certification Regarding Business with Certain Countries and Organizations.* Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Engineer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- I. *Certification Regarding Boycotting Energy Companies.* Pursuant to Chapter 2274, Texas Government Code, Engineer certifies that either (1) it is a sole proprietorship or company with fewer than ten (10) employees or (2) it does not currently boycott energy companies and will not boycott energy companies during the Term of this Agreement. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- J. *Certification Regarding Boycotting Firearm and Ammunition Industries.* Pursuant to Chapter 2274, Texas Government Code, Engineer certifies that either (1) it is a sole proprietorship or company with fewer than ten (10) employees or (2) it does not currently boycott firearm and ammunition industries; and will not boycott firearm and ammunition industries during the Term of this Agreement. Engineer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the Exhibits or Task Order, or in the following provisions:
 - 1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 - 2. *Additional Services* – Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.

3. *Agreement* – This "Master Services Agreement between Owner and Engineer for Professional Services – Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
4. *Application for Payment* – The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services* – Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
7. *Bid* – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents* – The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order* – A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
11. *Construction Agreement* – The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract* – The entire and integrated written agreement between Owner and a Contractor concerning the Work.
13. *Construction Cost* – The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of

services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between Owner and a Contractor, Addenda (which pertain to the Contract Documents), a contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price* – The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times* – The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment, and (iii) meet any other specified milestone.
18. *Contractor* – An individual or entity with whom Owner enters into a Construction Agreement for a Specific Project.
19. *Correction Period* – The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

21. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
22. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement* – The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order* – The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Field Order* – A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
27. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project. The “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Document Committee (Document No. C-700, 2007 Edition) will be used unless both Parties mutually agree in a Task Order to use other General Conditions.
28. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
29. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

33. *Record Drawings* – The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
34. *Reimbursable Expenses* – Reasonable and customary expenses approved by Owner in a Task Order and incurred directly by Engineer in connection with the performing or furnishing of Services for a Specific Project for which Owner shall pay Engineer.
35. *Resident Project Representative* – The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative will be as set forth in each Task Order.
36. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
38. *Site* – Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
39. *Specifications* – That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
40. *Specific Project* – An undertaking of Owner as set forth in a Task Order.
41. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
42. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.

43. *Task Order* – A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
44. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner.
45. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided by a Contractor under Contract Documents for a Specific Project. Work includes and is the result of a Contractor performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the applicable Contract Documents.
46. *Work Change Directive* – A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
47. *Written Amendment* – A written amendment of the Contract Documents signed by Owner and a Contractor on or after the Effective Date of a Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits

| Included? (Yes or No) | Exhibit Letter | Exhibit Title |
|--------------------------|-------------------|--|
| Yes | | Attachment 1 – Task Order Form |
| No | A | Schedule of Engineer's Services |
| No | B | Schedule of Owner's Responsibilities |
| No | C | Payments to Engineer for Services and Reimbursable Expenses |
| No | D | Schedule of Duties, Responsibilities and Limitations of Authority of Resident Project Representative |
| No | E | Notice of Acceptability of Work (Form) |
| No | F | Construction Cost Limit |

| Included? (Yes or No) | Exhibit Letter | Exhibit Title |
|--------------------------|-------------------|--------------------------------|
| Yes | G | Insurance |
| No | H | Dispute Resolution |
| No | I | Allocation of Risks |
| No | J | Reserved |
| Yes | K | Amendment to Task Order (Form) |

8.02 *Total Agreement*

- A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the Services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective Party. Each Task Order shall likewise designate representatives of the Parties. The Designated Representative may be changed with written notice to the Designated Representative of the other Party.

IN WITNESS WHEREOF, the Parties execute this Agreement.

OWNER:

ENGINEER:

By: _____

By:  _____

Name: _____

Name: Alvin R. Sutton III, P.E., CFM

Title: Mayor, City of Bartlett

Title: Partner

Engineer License or Firm's
Certificate No. (if required by law) F-510

State of: Texas

Date Signed: _____

Date Signed: January 19, 2024

ATTEST:

APPROVED AS TO FORM:

_____, City Secretary

City Attorney

DESIGNATED REPRESENTATIVE
(see Paragraph 8.03.A):

Title: City Administrator, Mayra Cantu

Phone Number: 737-667-0156

E-Mail
Address: mayra.cantu@bartlett-tx.us

Address for giving notices:

140 W. Clark Street

Bartlett, TX 76537

DESIGNATED REPRESENTATIVE
(see Paragraph 8.03.A):

Trae Sutton, P.E., CFM
Title: Partner

Phone Number: 512-819-9478

E-Mail tsutton@kpaengineers.com
Address:

Address for giving notices:

800 S Austin Ave

Georgetown, Texas 78626

TASK ORDER

Task Order No. xxx-xx-xxx,
consisting of _____ pages.

Task Order

In accordance with paragraph 1.01 of the Master Services Agreement between Owner and XXXXXX. ("Engineer") for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. **Specific Project Data**

A. Title: _____

B. Description: _____

C. City of Bartlett Project Number: _____

D. Master Services Agreement, Contract Number: XX-XXX-MSA

2. **Services of Engineer**

See Exhibit A, Scope of Services, attached.

3. **Owner's Responsibilities**

Owner shall have those responsibilities set forth in the Agreement subject to the following: *[Here incorporate applicable text or paragraphs for this Specific Project from Exhibit B, Schedule of Owner's Responsibilities – either by reference or by insertion here.]*

4. **Times for Rendering Services**

| <u>Phase</u> | <u>Completion Date</u> |
|--------------|------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

TASK ORDER

5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

| <i>Category of Services</i> | <i>Compensation Method</i> | <i>Lump Sum or Not to Exceed Amount of Compensation for Services</i> |
|--|---|--|
| <i>Basic Services (Study and Report, Preliminary Design, Final Design, Bidding or Negotiating, Construction Phase)</i> | <i>A. Lump Sum B. Standard Hourly Rates C. [Insert any other compensation method]</i> | |
| <i>Resident Project Representative and Post- Construction Phase Services</i> | <i>A. Lump Sum B. Standard Hourly Rates C. [Insert any other compensation method]</i> | |
| <i>Additional Services</i> | <i>A. Lump Sum B. Standard Hourly Rates C. [Insert any other compensation method]</i> | |

B. The terms of payment are set forth in Article 4 of the Agreement unless modified in this Task Order.

6. **Consultants:**

7. **Other Modifications to Agreement:**

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. **Attachments:**

9. **Documents Incorporated By Reference:** The Agreement effective _____.

[Supplement with reference to other Documents, if appropriate.]

TASK ORDER

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, 20____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. F - 5 1 0
State of: Texas

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

TASK ORDER

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: 140 W Clark St.
Bartlett, TX 76537

Address: 800 S Austin Ave
Georgetown, TX 78626

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _

Phone: _

Fax: _

Fax: _

EXHIBIT G, consisting of 1 page, referred to in and part of the Master Services **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Insurance

Paragraph 6.03 of the Agreement is amended and supplemented to include the following agreement of the parties.

The limits for Engineer's insurance required by paragraph 6.03 of the Agreement are as follows:

Workers' Compensation with statutory limits. Engineer shall certify in writing that the Engineer provides Workers' Compensation Insurance for all of Engineer's employees involved in the Project. In addition, Engineer shall meet each stipulation required by the Texas Workers Compensation Commission. If you have questions concerning the requirements, you are instructed to contact the TID at (800) 252-3439.

Employers Liability with minimum limits for bodily injury: a) by accident, \$250,000 per each accident b) by disease, \$250,000 per employee with a per policy aggregate of \$500,000.

Commercial General Liability including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate. If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than 24 months following the last to occur: 1) expiration of this Agreement; or 2) Engineer's completion, and Owner's acceptance, of all Services provided under any and all Task Orders, if any, approved pursuant to the Agreement. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Agreement.

Business Automobile Liability covering owned, hired, and non-owned vehicles, with minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.

Professional Liability \$2,000,000 per claim. With written approval of the City Administrator, a Claims Made Policy may be accepted for Professional Liability Insurance.

EXHIBIT K, consisting of ____ pages, referred to in and part of the Master Services **Agreement between Owner and Professional Engineer for Professional Services – Task Order Edition** dated ____.

_____ **Amendment to Task Order No.** _____

1. Specific Project Data:

- A. Title: _____
- B. Description: _____

- C. City of Bartlett Project Number: _____
- D. City of Bartlett General Ledger Account No.: _____
- E. City of Bartlett Purchase Order No.: _____
- F. Master Services Agreement, Contract Number: 23-0078-MSA

2. Nature of Amendment *[Check those that are applicable and delete those that are inapplicable.]*

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- Modifications to other terms and conditions of the Task Order

3. Description of Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this Amendment. Refer to paragraph numbers used in the Task Order, the Agreement, or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments. Delete this paragraph after completing form.]

- A. Engineer shall perform the following Additional Services:

- B The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous Amendments, if any, is modified as follows:

- C. The responsibilities of Owner are modified as follows:

- D. For the Additional Services or the modifications to Services set forth above, Owner shall pay Engineer the following additional or modified compensation:

- E. The schedule for rendering Services is modified as follows:

- F. Other portions of the Task Order (including previous Amendments, if any) are modified as follows:

4. Attachments [if any]:

Terms and Conditions: Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and the Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Task Order Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Engineer License or Firm's Certificate No. _____

State of: Texas

APPROVED AS TO FORM:

Doug Montgomery
City Attorney