

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for Professional Services (“Agreement”) is made by and between the City of Farmers Branch, a Texas home rule municipality (“City”), and Nathan D. Maier Consulting Engineers, Inc., a Texas corporation (“Professional”), a Texas corporation (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, City desires to engage the services of Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist City in preparation of the design, request for bids, construction documents and contract administration for Farmers Branch Creek Emergency Erosion Control Downstream of Ford Road (the “Project”) on the terms and conditions set forth in this Agreement; and

**WHEREAS**, Professional desires to render services for City on the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I  
Term**

1.1 This Agreement shall commence on the last date it has been signed by authorized representatives of the Parties, whether on the same document or in duplicate counterparts (“Effective Date”) and continue until completion of the services which shall be not later than 270 calendar days after delivery of a written Notification to Proceed by City to Professional, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination, Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, or other items prepared by Professional in connection with this Agreement upon receipt of all amounts due and payable to Professional for work completed as of the date of termination. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of City in accordance with this Agreement prior to such termination.

**Article II  
Scope of Service**

2.1 Standard of Care. Professional shall perform the services in connection with the Project as set forth in the Scope of Services. Professional shall perform the services with: (i) the

professional skill and care ordinarily provided by competent architects or engineers, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect or engineer, as the case may be.

2.2 City Information. City shall, prior to commencement of services, provide Professional with the information set forth in the Scope of Services, if any.

2.3 Licenses. Professional represents to City that Professional possesses any and all licenses which may be required by the State of Texas or any other governmental entity having jurisdiction as may be necessary for the performance of Professional's services pursuant to this Agreement.

2.4 Information/Confidentiality. City will furnish to Professional such information with respect to the Project as Professional may reasonably request in order to render Professional's services effectively. Professional will hold in strict confidence all information with respect to the Project which is furnished to Professional by City in confidence, and which is not otherwise publicly available and/or not required, as a matter of law or proper business practice, to be disclosed to a third party in connection with the consulting services for the Project.

2.5 Deliverables.

- (a) All documents including but not limited to reports, drawings, and specifications, provided or furnished by Professional pursuant to this Agreement are instruments of service in respect to the Project, whether such Project is completed, and shall be the property of the City ("Instruments of Service"). The City shall have, keep and retain all rights, title and interest in and to all Instruments of Service, including all ownership, common law, statutory, and other reserved rights, including copyrights, in and to all Instruments of Service, whether in draft form or final form, which are produced at its request and in furtherance of this Agreement. The Professional shall endeavor to omit any information in the Instruments of Service which may constitute trade secrets or copyrighted. If any portion of the documents comprising the Instruments of Service have been previously copyrighted or otherwise protected from disclosure or unauthorized use by the Professional which have previously been prepared by the Professional and which are not created for the sole and specific purpose of this Project, such copyright protections or reservations of rights shall be expressly stated thereon. Professional shall not place any copyright marks on the Instruments of Service.
- (b) When such documents are in electronic form, the City shall own copies of data files, text, specifications, or drawings for the City's information in its use of the Services. However, due to the potential that electronic information can be modified by the City or other persons, unintentionally or otherwise, Professional reserves the right to remove all indicia of its ownership and/or involvement from each electronic display or file. For documentation purposes, the original computer files will be

retained by Professional for a period not to exceed five (5) years after completion of the Services. Thereafter, all such files shall be remitted to the City.

- (c) In addition, electronic information created and produced by Professional is considered a part of Professional's instrument of service and will not be used by the City for other services, for additions to the Scope of Services, or for completion of this Scope of Services by another design professional except by agreement or Professional's default.
- (d) Any such use or reuse of any Instrument of Service by the City or others without written verification or data adaptation by Professional for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Professional. Notwithstanding the foregoing the City, its contractors and consultants may use the Instruments of Service for the Project.

2.6 Conflict of Interest. Professional agrees to notify City and seek City's approval prior to Professional's retention by any other individuals or entities, which either directly or indirectly may create a conflict of interest in Professional's services under this Agreement. City may deny any such approval for Professional's retention set forth above, in the event City, in City's sole and absolute discretion, should conclude that such retention would have an adverse effect on Professional's services under this Agreement.

2.7 Opinion of Probable Costs. Professional will, if required by the Scope of Services, furnish an opinion of probable Project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by Professional hereunder will be made on the basis of Professional's cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining their prices.

2.8 Mutual Waiver of Consequential Damages. Except for the indemnification provided by the Professional for the City, in no event shall either Party be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

2.9 Construction Observation. The Professional may visit the site from time to time, or as otherwise agreed to in writing by the City and the Professional, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Professional to become generally familiar with the Work in progress and to determine in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, the Professional shall keep the City informed about the progress of the Work and shall advise the City about observed deficiencies in the Work. If the City desires more extensive project observation or full-time project representation, the City shall request that such services be provided by the Professional as Additional Services in accordance with the terms of

this Agreement. The Professional shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction mean, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

The Professional shall not be responsible for any acts or omissions of the Contractor, and subcontractor, any entity performing any portions of the Work or any agents or employees of any of them. The Professional does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.

2.10 Definition of "Hazardous Materials". As used in this Agreement, the term hazardous materials shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

2.11 Hazardous Materials—Suspension of Services. Both Parties acknowledge that the Professional's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Professional or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to the Professional that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the Professional's services, the Professional may, at its sole option and without liability for the consequential or any other damages, suspend performance of its services under this Agreement until the City retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations

2.12 Waiver of Claims for Hazardous Materials. In consideration of the substantial risks to the Professional in rendering its services in connection with the Project due to the presence or suspected presence of hazardous materials (as defined in this Agreement) at or near the job site, the City agrees to make no claim and hereby waives, to the fullest extent permitted by law, any claim or cause or causes of action of any kind, including but not limited to negligence, breach of contract or warranty, either express or implied, strict liability or any other causes, against the Professional, its officers, directors, partners, employees and subconsultants (collectively, Professional), which may arise out of or may in any way be connected to the presence of such hazardous materials. The City acknowledges that the Professional is not and shall not be required to be in any way an arranger, generator operator or transporter of hazardous materials present at or near the Project site (as these items are defined in applicable federal or state statutes and all related regulations).

2.13 CADD and Electronic Files. The City acknowledges the Professional's drawings and specifications, including all documents on electronic media, as instruments of the Professional's professional service. Nevertheless, the drawings and specifications prepared under

this Agreement shall become the property of the City upon completion of services and payment in full of all monies due to the Professional. The City shall not reuse or make or permit to be made any modification to the drawings and specifications without the prior written authorization of the Professional. The City agrees to waive any claim against the Professional arising from any unauthorized transfer, reuse or modification of the drawings and specifications. Any changes to these specifications by either the City or the Professional are subject to review and acceptance by the other Party. Additional efforts by the Professional made necessary by a change to the electronic file specifications shall be compensated for as Additional Services. Electronic files furnished by either Party shall be subject to an acceptance period of thirty (30) days during which the receiving Party agrees to perform appropriate acceptance tests. The Party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period the electronic files shall be deemed to be accepted and neither Party shall have any obligation to correct errors or maintain electronic files. The City is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed or sealed hard-copy construction documents prepared by the Professional and electronic files, the signed or sealed hard-copy construction documents shall govern. Under no circumstances shall delivery of the electronic files for use by the City be deemed a sale by the Professional, and the Professional makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Professional be liable for any loss of profit or any consequential damages as a result of the City's use or reuse of the electronic files.

2.14 Jobsite Safety. Neither the professional activities of the Professional, nor the presence of the Professional or its employees and subconsultants at a construction/project site, shall impose any duty on the Professional, nor relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract. Documents and any health or safety precautions required by any regulatory agencies. The Professional and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The City agrees that the General Contractor shall be solely responsible for job site and worker safety and warrants that this intent shall be carried out in the City's contract with the General Contractor.

2.15 Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Professional. The Professional's services under this Agreement are being performed solely for the City's benefit, and no other Party or entity shall have any claim against the Professional because of this Agreement or the performance or non-performance of services hereunder. The City and Professional agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

### **Article III Schedule of Work**

3.1 Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

3.2 Force Majeure. Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for services already performed, if such delay is caused by events beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods, strikes, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions (an event of "Force Majeure"), the Party so obligated shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) businesses days after occurrence of the event(s) or condition(s) causing the delay describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred. In the event that any event of Force Majeure as herein defined occurs, the Professional shall be entitled to a reasonable extension of time for performance of its services under this Agreement.

### **Article IV Compensation and Method of Payment**

4.1 Invoices; Payment. Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services in the amount of One Hundred Twenty-Four Thousand Five Hundred and No/100 Dollars (\$124,500.00). Unless otherwise provided herein, payment to Professional shall be monthly based on Professional's monthly progress report and shall include the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.2 Expenses. Unless otherwise provided in the Scope of Services Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

4.3 Rate Schedule. The hourly rates set forth in the Scope of Services, if any, shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of City.

## **Article V Devotion of Time; Personnel; and Equipment**

5.1 Devotion of Time and Personnel. Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should City require additional services not included under this Agreement, Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 Engagement of Third Parties. To the extent reasonably necessary for Professional to perform the services under this Agreement, Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that Professional may deem proper to aid or assist in the performance of the services under this Agreement. Professional shall provide written notice to and obtain written approval from City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder and shall not otherwise be reimbursed by City unless otherwise provided herein.

5.3 Professional's Facilities and Equipment. Professional shall furnish the facilities, equipment, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 Progress Reports and Meetings. Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by City or more frequently as may be required by City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

## **Article VI Miscellaneous**

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by Professional to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in a State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Professional, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor and not as an agent or employee of City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Right-of-Access. Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. Professional will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail or courier to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: Benjamin W. Williamson  
City Manager  
City of Farmers Branch  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With a copy to:

Attn: Peter G. Smith  
City Attorney  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

If intended for Professional:

Attn: Gary L. Dreighton, PE (TX)  
Vice President  
Nathan D Maier Consulting Engineers, Inc.  
12377 Merit Drive, Suite 700  
Dallas, Texas 75251

6.10 Insurance.

- (a) During the term of this Agreement, Professional shall maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage including the property of City, its officers, contractors, agents and employees (collectively referred to as the “City Parties”) insuring against all claims, demands or actions relating to the work and services provided by Professional pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations coverage of \$1,000,000.00. This policy shall be primary to any policy or policies carried by or available to City; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker’s Compensation Insurance at the statutory limits and Employers Liability covering all of Professional’s employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and (iv) Professional Liability with policy limit of not less than \$3,000,000.00 annual aggregate, covering negligent acts, errors and omissions by Professional, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement.
- (b) All insurance shall be endorsed to provide the following provisions: (1) name City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to City that indicates the insurance company will provide to City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, Professional shall provide at least thirty (30) days prior written notice to City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by City.
- (d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to City prior to commencement of services. On every date of renewal of the required insurance policies, Professional shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to City. In addition, Professional shall within ten (10) business days after written request provide City with certificates of insurance and policy endorsements for the insurance required herein.

6.11 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, the principal of this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither Professional nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.
- (b) If, during the term of this Agreement, Professional becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, Professional shall immediately inform City.
- (c) For agreements that are financed by Federal or State grants, Professional agrees that this section will be enforced on each of its subcontractors and will inform City of any violations of this section by subcontractors to the Agreement.
- (d) The certification in this section is a material representation of fact relied upon by City in entering into this Agreement.

6.12 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, TO THE EXTENT CAUSED BY OR RESULTING FROM PROFESSIONAL’S NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY PROFESSIONAL, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH PROFESSIONAL EXERCISES CONTROL. INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS’ FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO PROFESSIONAL’S LIABILITY.

PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.13 Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.14 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.14 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

- (a) Professional verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- (b) Professional verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.
- (c) Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- (d) This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

*(Signature Page to Follow)*

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
Benjamin W. Williamson, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Stacy Henderson, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**SIGNED AND AGREED** this 23rd day of May, 2023.

**NATHAN D MAIER CONSULTING ENGINEERS, INC.**

By:  \_\_\_\_\_  
Gary L. Dreighton, PE (TX), Vice President

**EXHIBIT "A"**  
**SCOPE OF WORK**

**PROJECT: Farmers Branch Creek Emergency Erosion Control Downstream of Ford Road**

**PROJECT UNDERSTANDING**

Professional shall provide engineering services associated with performing preliminary design analysis and construction plan preparation for erosion control and improvements along Farmers Branch Creek. The eroded area is shown on the effective FEMA FIRM Panel 48113C0170K dated 07/07/2014 for Dallas County Texas. The subject area is within the Zone AE (detailed study) floodplain of Farmers Branch Creek on the FIRM. The project area is located in a reach of Farmers Branch Creek that is approximately 250 feet long. The channel erosion has resulted in oversteepened and unstable banks and an exposed waterline. This is shown on the attached Exhibit as the yellow area. Erosion control improvements, with end sections, will be designed to stabilize the slope in this area. These improvements may use stepped gabion walls with a tie-back system or concrete slopes. Professional shall design a replacement for an exposed waterline.

**SCOPE OF PROFESSIONAL SERVICES**

The scope of services includes the preliminary analysis, design, and plan preparation as defined by the following tasks.

Task 1 - Coordination and Meetings

Professional will provide overall coordination for the project. This will include coordination with the City staff during the project. All meetings will be conducted either in person or via teleconference.

Task 2 – Data Collection and Field Reconnaissance

Professional will collect and review information necessary to complete the design for the erosion control and protection at the project area. The City shall provide available topographic data (current and past data, in digital format), hydrologic and hydraulic models, previous reports, sub-division plans, roadway and storm sewer plans, sanitary sewer plans, water line plans, other utility information within the identified project areas, and right-of-way, easement and plat information. A field reconnaissance will be performed for the project sites to identify current conditions and evaluate potential improvement considerations.

Task 3 – Field Survey

Professional will perform detailed field survey within the identified project area. The proposed purpose of the survey will be to define the extent of the existing erosion problem as required for the preparation of construction plans. The area to be surveyed is shown in yellow on the attached exhibit. Professional will determine property ownership for adjacent properties by obtaining data from the Central Appraisal District. The City shall acquire right-of-entry permissions as required. Survey services will include the establishment of benchmarks and horizontal control using GPS that will tie into the existing City network and referencing to the Texas State Plane coordinate system (NAD 83, NAVD 88). The survey services shall include contacting 811 to get utility locates, tying utility locate information and securing survey data to prepare a topographic map with 1' vertical contours (as appropriate) for the site areas. The centerline elevation will be surveyed every 50' and at major drops along the reach where erosion can be monitored.

Detailed survey that will include the following:

## **EXHIBIT "A"**

### **SCOPE OF WORK**

- a. Channel area from approximately 50 feet back from the top of bank to 50 feet back from the top of the opposite bank at the proposed stabilization area. This shall include any existing fences and limits of residential improvements near the top of bank (houses, pools, fencing, buildings, etc. that are closest to the top of bank).
- b. Identify visible horizontal and vertical major changes in soil and rock in the bank.
- c. Locate and identify all trees 6-inches and larger in caliper within the proposed improvement area.
- d. Locate and establish horizontal and vertical locations of geotechnical borings.
- e. Survey of adjacent improvements, including existing gabions.
- f. Three (3) cross sections matching the currently available FEMA sections.

If required, perform a detailed boundary survey for exhibit documents. All property should be City-owned property. These boundary surveys will be used to establish and prepare any needed easements on these lots.

#### Task 4 – Geotechnical Services

Geotechnical services shall be provided for this project. The geotechnical scope is as follows:

1. Two (2) borings, one on each side of the creek, to an approximate depth of 50 feet, or 10 foot into unweathered rock.
2. A geotechnical report will be provided that will identify the parameters required for the design of the improvements, including a slope stability analyses for the site on each side of the creek. Improvements options may include gabion walls with tie-backs, or concrete retaining walls with piers.

#### Task 5 – Hydraulic Analysis

Professional will review the existing hydraulic model previously developed for Farmers Branch Creek, which was sent to Professional by Farmers Branch. The scope of services does not include developing a new hydraulic model. Based on the field survey and available topographic information, Professional shall revise the existing hydraulic model for Farmers Branch Creek. The hydraulic analyses shall be performed for the flood discharges available in existing models. Additional cross-sections will be added to the model as required for analyzing the proposed improvements. The use of the field survey data will more accurately reflect the hydraulic conditions within the project areas. The results from the HEC-RAS model will provide the following information:

1. Revised flood elevations within the channel.
2. Channel velocities distributions, as required for design purposes.
3. Information on the tractive forces during flood events.

#### Task 6 – Preliminary Design Analysis and Preliminary Plans (approximate 30% plans)

Professional will perform preliminary design analyses for the erosion control improvements at the project site. The purpose of the project shall be to determine measures necessary to stabilize the existing channel banks and to protect the project area from the erosive forces. Professional will review updated hydraulic analyses related to erosive conditions. Preliminary design modeling will be performed to establish alternative options. The purpose of the modeling will be to identify improvements that will not result in adverse hydraulic conditions that would require a CLOMR. Professional will perform preliminary design analyses of options that will include slope stability improvements. These improvements may include gabion walls with tie-backs, rip-rap, gabion or concrete walls with anchor piers, or stable channel side slopes. The preliminary improvements will address the protection of the toe of the proposed improvements. The scope of services does not include improvements to the channelbottom. Professional will provide preliminary structural design for the improvements.

## **EXHIBIT "A"**

### **SCOPE OF WORK**

Professional will meet with City staff to discuss these alternatives. This meeting will address results of alternative designs for the site, opinions of probable costs, permitting issues, construction access issues and recommended access location. The purpose of this meeting will be to present information to allow the City to select the appropriate options at the site and project access location. Following the meeting, the City will issue a letter to Professional with the City's selection of alternatives and the location of the construction access.

Based on the alternatives selected by the City, Professional shall complete the Preliminary Plans for the recommended improvements. Based on the proposed Preliminary Plans, Professional shall identify the approximate areas that may be required for any easements. The Preliminary Plans will include: general site plan layout, improvement plan cross-sections that shows proposed configuration and materials, proposed plan profile, and transitional improvements to existing conditions.

A preliminary schedule shall be provided that includes addressing permit requirements, plan preparation, and construction activities. The schedule shall include addressing waters of the U.S. only and no TPWD. This documentation shall address the permitting requirements for the project areas, site construction issues and access.

Professional will also provide preliminary contract documents for the replacement and encasement of approximately 160 feet of 12-inch water line. The limits of replacement will be extended from one side the bridge abutment to the other side of the bridge abutment. Preliminary construction plans, specifications, and details will be developed assuming the water line size will remain the same as existing.

#### Task 7 - Plans and Specifications (60%, 90%, and Final)

Once the Preliminary Plan has been accepted by the City, then Professional will begin the preparation of a set of construction plans for the project area. The construction plan set will be based on one plan set. As a part of the plans and specifications phase, the hydraulic models developed in the Preliminary phase will be updated to include any revisions from the Preliminary Plan for the final hydraulic models.

The construction plans will detail necessary erosion protection, project details, and description of project materials. This will include detailed structure design, structural details, project horizontal and vertical control data, rock riprap sizing, and other necessary project details. The general project plan will be developed at a scale of 1"=20'. A half-scale set of the project plans will be provided along with a full set of plan drawings. Structural design services will be provided for the improvements. Contract documents will also be developed which include the project technical specifications for the project area. Professional will provide the final contract documents for the replacement and encasement of the waterline as described in the Preliminary Design Task No. 6. Contract documents will be developed based on City standard conditions and NCTCOG standards, as appropriate.

Milestone submittals will be made at approximately 60% and 90% completion. A check set will also be submitted of the final plans, prior to sealing the drawings. Professional will also develop quantities with the 90% and final plan set submittals. It is understood that the plans for the project site improvements will be bid with as a single construction project.

#### Task 8 – Permitting

Professional shall provide services to the City related to regulatory permitting. The possible permitting entities included the U. S. Army Corps of Engineers (USACE) for a 404 permit and Texas Historical Commission. This

## **EXHIBIT "A"**

### **SCOPE OF WORK**

scope assumes that improvements can be designed that will not raise the BFE and will not require any FEMA submittal.

Farmers Branch Creek will be jurisdictional waters of the U.S. and improvements will require a 404 permit. The scope includes establishing the limits of jurisdictional waters for the project area. This jurisdictional determination shall be submitted to the U. S. Army Corps of Engineers (USACE) for review and approval. The services will also include a Threatened and Endangered Species review and review of possible cultural resource impacts (including historic homes). Professional will submit documents for an appropriate nationwide permit. The scope of services do not include submittal for an Individual Permit.

Professional shall provide coordination services with the USACE during the permitting activity. As a part of the 404 permitting, Professional will identify any mitigation that may be required for the project area. This will include the off-site mitigation required for the project.

Professional will also submit a letter to the Texas Historical Commission related to the survey findings. The services include an Antiquities Permit and Pre-Field Coordination, an Intensive Pedestrian Survey, and Laboratory Analysis and Technical Report. This report will be submitted to the THC for review under the ACT.

#### Task 9 – Bidding Phase

Professional shall attend the pre-bid meeting, provide bid documents, address contractor questions during the bidding phase, and provide any addendums required for plan revisions.

#### Task 10 – Construction Administration Services

Professional shall respond to RFIs, have monthly construction meetings, review pay estimates, and perform 8-10 site visits as needed.

#### Task 11 – Construction Observation Services

This is not included.

#### Task 12 – Easement Preparation

Not included. This project should be constructed on City property, if easements are needed then they will be developed as needed for \$3,000 per easement.

#### Task 13 – Record Drawing Services

Professional shall prepare record drawings for the completed project. The City shall provide mark-ups of the construction plans and contract documents that identifies changes made during construction. The Record Drawings will be based on the information provided by the City. No verification of the construction shall be provided by Professional.

### **DELIVERABLES**

The scope of services include the following deliverables:

**EXHIBIT "A"**  
**SCOPE OF WORK**

1. Review submittals: Two (2) sets of full-size Preliminary Plans will be submitted to the City for review and comment to allow for revisions related to Preliminary approaches.
2. Milestone submittals (60% and 90%): Two (2) full sets of construction plans will be submitted, at each milestone submittal, to the City for review and comment to allow for revisions related to construction detail.
3. Final Submittal.
  - a. Four (4) sets of 22" by 34" (full size) drawings.
  - b. One (1) CD's with digital copies of the drawings in pdf and AutoCADD format.
  - c. One original for the contract documents (including quantities and special specifications) for bidding purposes along with a digital copy.
4. Record Drawings
  - a. Two (2) CD's with digital copies of the drawings and construction documents in pdf and AutoCADD format.

Easements for lots and one temporary construction access easement, as required for project improvements.

**COMPENSATION**

Engineering services to be completed will be performed on a lump sum basis. Attachment "A" provides the rates for the hourly basis. The total compensation is \$ 124,500 and the following fee breakdown is provided for information purposes only and does not represent the final compensation that may be required for each task.

Task 1 - Coordination and Meetings	\$ 5,300
Task 2 – Data Collection and Field Reconnaissance	\$ 2,500
Task 3 – Field Survey	\$ 15,200
Task 4 – Geotechnical Services	\$ 26,400
Task 5 – Hydraulic Analysis	\$ 2,100
Task 6 – Preliminary Design Analysis and Preliminary Plan	\$ 23,500
Task 7 – Plans and Specifications	\$ 30,000
Task 8a– Permitting	\$ 4,400
Task 8b – Cultural Resources Survey and Coordination	\$ 2,900
Task 9 – Bidding Phase	\$ 3,000
Task 10 – Construction Administration Services	\$ 6,200
Task 11 – Construction Observation Services	N/A
Task 12 – Easement Preparation	N/A
Task 13 – Record Drawings Services	\$ 2,200
Reimbursable	\$ 800
<b>TOTAL</b>	<b>\$ 124,500</b>

The costs listed above are based on the assumptions and conditions contained herein. Any deviations in the project from these specified assumptions and conditions may result in additional costs. Costs for additional scope items can be provided upon request, if needed.

All non-labor/reimbursable costs including mileage, deliveries and reproductions will be billed at the rate of actual cost plus 15%. Invoices will be submitted monthly on a percent complete basis and will be payable within 30 days. Any platting and boundary survey services are subject to State sales taxes. The City or Owner shall pay all City and/or Federal fees.

## **EXHIBIT "A"**

### **SCOPE OF WORK**

#### **SCHEDULE**

Engineering services for the Preliminary Phase shall be completed within six (6) months from the receipt of a signed contract and a written notice-to-proceed. The construction plans, based on the schedule, shall be provided to the City six (6) months after receipt of a written acceptance of the Preliminary Plans.

#### **ADDITIONAL SERVICES**

The scope of services defines the work to be completed under this contract. Any services not specifically named in the Scope of Services shall be considered Additional Services. Additional Services required from Professional that may arise and are not outlined above shall be compensated for on an hourly basis according to the attached "Schedule of Fees and Charges". The City of Farmers Branch may request additional services to be performed, which could include, but is not limited to the following:

1. Any preparation for, or participation in meetings with homeowners.
2. This scope of services assumes that the existing models will be used, no new hydraulic or hydrologic models will be created. The hydrologic model will not be changed or revised.
3. Professional's cost for this scope of services does not include paying any fees to any agency.
4. Submittal for an Individual 404 permit for the proposed project improvements.
5. Submittal for any permitting and approvals (FEMA, CDC, etc.).
6. Services related to detailed review, investigations, and additional permitting required by the Texas Historical Commission or for threatened and endangered species.
7. Changes in project approach after acceptance of the Preliminary Plan approach.
8. Division of the plans into separate construction projects or additional bid phases. This scope that the project will be bid as a single construction project with only one bid advertisement and pre-bid meeting.
9. Additional survey other than what is included in this scope.
10. This scope of services does not include Professional having to correct any deficiencies found in any data provided by others.
11. The City may also need an Arborist to evaluate the trees on the site and to develop a mitigation plan if trees are to be removed as a part of the reclamation plan. Professional will assist the City as requested in obtaining the services of a qualified consultants to provide these services. This service is not included in the scope of this proposal.

#### **RIGHT TO RELY**

Professional shall have the right to rely on all information provided by the City or any appropriate governmental agency in the performance of this contract.

**EXHIBIT "A"**  
**SCOPE OF WORK**

**ATTACHMENT "A"**

**SCHEDULE OF FEES AND CHARGES**

The following Schedule of Fees and Charges shall be modified on January 1, 2024.

Principal .....	\$150.00 - \$260.00 / hour
Expert Testimony (Trial and Depositions).....	\$350.00 - \$500.00 / hour
Expert Testimony (Preparation Work).....	\$250.00 - \$350.00 / hour
Registered Engineer .....	\$130.00 - \$240.00/ hour
Registered Surveyor .....	\$110.00 - \$240.00/ hour
Engineer-in-training.....	\$90.00 - \$115.00 / hour
Senior Designers.....	\$90.00 - \$135.00 / hour
Technician.....	\$85.00 - \$115.00 / hour
Drafter.....	\$60.00 - \$85.00 / hour
Field Party.....	\$165.00 / hour
Administrative Assistant.....	\$67.00 / hour
Construction Manager.....	\$120.00 - \$215.00/ hour
Construction Inspector.....	\$85.00 - \$115.00 / hour
Emergency Services .....	\$160.00 - \$280.00 / hour

Reimbursables

1. Direct costs, such as reproductions, equipment rental, delivery services, travel expenses, or subcontractor services will be billed at actual cost plus 15%.
2. Unless otherwise stated, statements will be submitted monthly for charges incurred during the month and payments will be due within thirty (30) days following receipt of the statements.

Effective January 1, 2023