

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, Texas (“**City**”) and **O’Brien Engineering, Inc.** (“**Professional**”) (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 **Cooks Creek Channel Improvements** (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     Effective Date; Term.** 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 exceed **200** calendar days after delivery of a written Notification to Proceed by City to Professional, unless sooner terminated as provided herein.

**1.2     Early Termination.** Either Party may terminate this Agreement providing written notice to the other Party not later than thirty (30) days prior to the termination date. 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. 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.** Prior to commencement of services, City shall deliver to Professional 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 City ("**Instruments of Service**"). 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. 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 Professional which have previously been prepared by 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, City shall own copies of data files, text, specifications or drawings for City's information in its use of the Services. However, due to the potential that electronic information can be modified by 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 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 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 City or others without written verification or data adaptation by Professional for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Professional. Notwithstanding the foregoing 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 Opinions of Probable Construction Cost.** Any opinions or estimates of probable construction costs to be provided under this Agreement are to be made or reviewed based on Professional's experience and qualifications and represent Professional's judgment as an experienced and qualified professional. However, since Professional has no control over the cost of labor, materials, equipment or services furnished by others or over the contractor's methods of determining prices, or over competitive bidding or market conditions, Professional cannot and does not guarantee that proposals, bids or actual final construction costs will not vary from the opinions or estimates prepared or reviewed by Professional.

**2.8 Construction Means, Methods and Safety.** Professional is not responsible for supervising, directing, controlling, or otherwise being in charge of the construction activities, means, methods or health or safety programs at the project site or in connection with the work; or supervising, directing, controlling, or otherwise being in charge of the actual work of the Construction Contractor, its sub-contractors, or other materialmen or service providers not engaged by Professional.

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

**3.1 Project Schedule.** 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, 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 lump sum fees for Basic Services and on an hourly rate for established Hourly Services as set forth in the Attachment B and shall not exceed **\$359,100.00**. 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 not later than 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 pursuant to this Agreement 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 Breach of Contract; Remedies**

**6.1 Default.** A Party shall be in default and breach of this Agreement if the Party (the "**Defaulting Party**") (i) receives written notice (the "**Default Notice**") from the other Party (the "**Non-Defaulting Party**") that the Defaulting Party is not in compliance with the provisions of this Agreement and identifies in the Default Notice the nature of provisions of this Agreement with which the Defaulting Party is not in compliance and the action or inaction giving rise to or causing the non-compliance and (ii) fails to come into compliance with the provisions of this Agreement identified in the Default Notice not later than the time provided by the Non-Defaulting Party in the Default Notice for curing such non-compliance (the "**Cure Period**"), which Cure Period shall not be less than fifteen (15) days after delivery of the Default Notice to the Defaulting Party if such default is not related to non-payment of amounts due to a Party pursuant to this Agreement, and not less than five (5) days if the default is related to non-payment of amounts due; provided, however, if the nature of the default is not related to non-payment of amounts due and cannot reasonably be remedied within the Cure Period, the Defaulting Party shall be given a reasonable amount of time to cure the default described in the Default Notice, which period shall not exceed an additional fifteen (15) days beyond the Cure Period stated in the Default Notice.

**6.2 City's Remedies.** If City is the Non-Defaulting Party, City may terminate this Agreement immediately upon delivery of written notice to Professional if Professional fails to cure the default described in a Default Notice within the Cure Period. If City terminates this Agreement pursuant to this Section 6.2, not later than five (5) business days after the date of 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. Professional shall be entitled to compensation only for any services completed to the reasonable satisfaction of City in accordance with this Agreement prior to such termination. This Section 6.2 shall survive the termination of this Agreement for purposes of enforcement of the post-termination performance of the Parties.

**6.3 Professional's Remedies for Default Other than Non-Payment.** If Professional is the Non-Defaulting Party and the default described in the Default Notice does not relate to the

failure of City to make a payment required by this Agreement, Professional may terminate this Agreement immediately upon delivery of written notice to City if City fails to cure the default described in a Default Notice within the Cure Period. If Professional terminates this Agreement pursuant to this Section 6.3, not later than three (3) business days after City pays Professional for all work completed in compliance with this Agreement, 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. This Section 6.3 shall survive the termination of this Agreement for purposes of enforcement of the post-termination performance of the Parties.

**6.4 Professional's Remedies for Default for Non-Payment.** If Professional is the Non-Defaulting Party and the default described in the Default Notice relate to City's failure to timely pay Professional as required by this Agreement, Professional may:

- (a) Suspend work pursuant to this Agreement, if the payment due has not been paid more than ten (10) days after the date such payment was due and remains unpaid more than five (5) days after delivery of the Default Notice to City; and
- (b) Terminate this Agreement upon written notice to City if the payment due continues to remain unpaid on the 31<sup>st</sup> day following delivery of the Default Notice to City.

If Professional terminates this Agreement pursuant to this Section 6.4, not later than three (3) business days after City pays Professional for all work completed in compliance with this Agreement, including all amounts past due and interest due and payable on such late payments, 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. This Section 6.4 shall survive the termination of this Agreement for purposes of enforcement of the post-termination performance of the Parties.

**6.5 Amount Due Professional on Termination.** Regardless of which Party terminates this Agreement pursuant to this Article VI, Professional shall be entitled only to compensation for any services completed to the reasonable satisfaction of City in accordance with this Agreement prior to such termination. Except for interest accruing on late payments as provided in Section 6.6, under no circumstances shall Professional be entitled to be paid more than the amounts set forth in Section 4.1, above.

**6.6 Interest on Past Due Payments.** Interest at the rate determined in accordance with Chapter 2251 of the Texas Government Code shall begin to accrue on payments due from City to Professional pursuant to this Agreement on the 31<sup>st</sup> day after City receives an invoice from Professional for services as set forth in Section 4.1, above.

**6.7 Mutual Waiver of Consequential Damages.** Except for the indemnification provided by Professional for 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.

**Article VII**  
**Miscellaneous**

7.1 **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.

7.2 **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.

7.3 **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 heirs, executors, administrators, legal representatives, successors and assigns.

7.4 **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 the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.5 **Amendments.** This Agreement may be amended only by written agreement signed by all of the Parties.

7.6 **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.

7.7 **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.

7.8 **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.

7.9 **Notice.** Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier or by confirmed telefax or facsimile 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: Charles S. Cox  
City Manager  
City of Farmers Branch, Texas  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234  
972.919.2518 – telephone  
972.919.2514 – facsimile

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201  
214.965.9900 – telephone  
214.965.0010 – facsimile

If intended for Professional:

Garry Kraus, P.E. – Vice President  
O'Brien Engineering, Inc.  
2340 E Trinity Mills, Suite 220  
Carrollton, Texas 75006

#### **7.10 Insurance.**

- (a) During the term of this Agreement, Professional shall maintain in full force and effect the following insurance:
- (i) Commercial 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") 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; An Excess / Umbrella policy following form of the underlying policy may be used to satisfy the limits required for Commercial general liability;
  - (ii) Automobile liability insurance policy 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 \$2,000,000.00 per claim and \$2,000,000.00 in the 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:
- (i) Except for the Workers Compensation Insurance and Professional Liability policy, name City, its officers, and employees as additional insureds as to all applicable coverage;
  - (ii) Except for the Professional Liability policy, 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;
  - (iii) 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. The Commercial General Liability, Automobile and Workmen Compensation 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. The delivery of the certificates of insurance and policy endorsements to City is a condition precedent to the payment of any amounts due to Professional by City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

### **7.11 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) If this Agreement is financed in whole or in part by Federal and/or State grants, Professional agrees that this section will be enforced on each of its subcontractors and will inform City of Farmers Branch of any violations of this section by subcontractors to the Agreement.

(d) The certification in this Section 6.11 is a material representation of fact relied upon by City in entering into this Agreement.

**7.12 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS COUNCIL, 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 THE 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 SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B). 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.**

### **7.13 Clean Air Act.**

(a) Professional agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et. seq.

(b) Professional agrees to report to City each violation of the Clean Air Act of which Professional becomes aware as a result of the work performed pursuant to this Agreement and understands and agrees that City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (“**FEMA**”), and the appropriate Environmental Protection Agency Regional Office.

(c) Professional agrees to include the above requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**7.14 Federal Water Pollution Act.**

(a) Professional agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq.

(b) Professional agrees to report to City each violation of the Federal Water Pollution Control Act of which Professional becomes aware as a result of the work performed pursuant to this Agreement and understands and agrees that City will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Professional agrees to include the above requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**7.15 Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended; Certification.**

Professional understands, acknowledges, and agrees as follows relating to compliance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended:

(a) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(b) The undersigned, on behalf of Professional, certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Professional, **O'Brien Engineering, Inc.**, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Professional understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



\_\_\_\_\_  
Signature of Professional's Authorized Official

April 13, 2021

\_\_\_\_\_  
Date Signed

Vice-President

\_\_\_\_\_  
Printed Name and Title  
of Professional's Authorized Official

**7.16 Counterparts.** This Agreement may be signed 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.

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

**7.18 Prohibition of Boycott Israel.** Professional verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. 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 13th day of April, 2021.

**O'BRIEN ENGINEERING, INC.**

By:   
Garry Kraus, P.E.  
Vice President - Operations

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
Charles S. Cox, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Amy Piukana, City Secretary

**APPROVED AS TO FORM:**

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

## Attachment A

### Cooks Creek Replacement – Scope of Services

#### Project Description

O'Brien Engineering, Inc. (OEI) has been asked to provide this proposal, by the City of Farmers Branch, for the replacement of the concrete channel sloped wall and channel bottom along Cooks Branch between Bee Street and Spring Valley Road. The primary purpose of this project will be to replace the existing trapezoidal channel wall throughout with a vertical wall channel to increase the channel capacity and reduce flooding.

The stretch of creek within the project area encompasses approximately 2,500 linear feet, as well as a 50-foot right-of-way area. The creek right-of-way abuts houses along Rugby Lane, Albemarle Drive, and Springvale Drive. In addition to channel replacement, the project will include replacement of a 21" diameter sanitary sewer line which lies within the creek and replacement of the Spring Valley Road bridge. The Bee Street and Valwood Parkway bridges are to remain in place.

Surveying of the creek, which was completed during the drainage study phase two years ago, will be updated to current conditions and expanded to include the creek portion between Valwood Parkway and Spring Valley Road.

A geotechnical investigation will be undertaken by the City of Farmers Branch to provide subsurface information for structural design of the channel and the Spring Valley Road bridge replacements.

The desired improvements are consistent with the conceptual recommendations of the drainage study on this creek prepared by OEI in 2019 and submitted to Texas Division of Emergency Management (TDEM) for FEMA review. Grant approval was provided by TDEM in January 2021. OEI will use the hydraulic modeling associated with this drainage study as the base model. While updates will be made to the corrected effective model (base on updated survey) and conceptual improvements model, hydraulic modeling will focus on matching the proposed hydraulic model to the proposed civil design phases. A proposal for additional services such can be provide at CLIENT's request.

Additionally, OEI will assist the City during the bidding and construction phases of the project, commenting on RFIs as well as attending the pre-bid meeting and an anticipated 5 site visits. No construction supervision is included with this proposal. Upon completion of construction OEI will assist the City with a request for LOMR from FEMA for the proposed improvements on Cooks Creek. FEMA's current review fee for a request for LOMR based on a constructed project is \$8,000. OEI will coordinate the submittal with the City of Farmers Branch and the City of Carrollton and necessary public notifications.

## **Project Scope of Services**

### **Basic Services:**

1. Data Gathering
  - a. GIS Data – Review GIS data previously obtained including parcel data, utilities, and LIDAR. Update as needed.
2. Survey
  - a. Obtain control from City of Farmers Branch GPS control monuments.
  - b. Update the current topographic survey of the channel from fence to fence and extend the survey to the reach between Valwood Parkway and Spring Valley Road.
  - c. Field locate all above ground utilities, structures, concrete paths and concrete channels in the Valwood Parkway to Spring Valley Road reach.
  - d. Obtain the final plats of the area that the channel area and locate monumentation enough to locate the boundaries of the dedicated channel area upstream of Valwood Parkway. Review the existing information on the reach between Bee Street and Valwood Parkway, updating as needed.
  - e. Elevations for the tops and bottoms of the concrete channel upstream of Valwood Parkway will be obtained every 75 feet.
  - f. Survey and all drawings shall be set to NAD 1983 coordinate system.
3. Preliminary Design (65%)
  - a. Develop a preliminary plan set at 10 to 50-foot scales, including structural engineer designed sections, bridge layout and foundations and key details.
  - b. Not all structural or civil plans will be fully detailed at this stage.
  - c. Provide an Opinion of Probable Cost (OPCC) for the preliminary design.
  - d. Prepare a list of specifications to be included in the final design.
  - e. Provide 3 sets of preliminary plans and specification list for review.
4. Hydraulic Analysis – Design and Request for LOMR
  - a. Corrected Effective Model
    - i. The existing corrected effective model will be used as the basis for this model with updates made to reflect the new survey.
  - b. Proposed Conceptual Model
    - i. Update previous drainage study proposed concept model as necessary to reflect the revised Corrected Effective model.
  - c. Preliminary, Final, and Corrected Final Design Models
    - i. Prepare proposed hydraulic models that represent the Preliminary (65%), Final (90%), and Corrected Final (100%) Designs if the design revisions require changes to the hydraulic model.
  - d. Technical Memorandum

- i. Prepare a technical memorandum that summarizes the hydraulic modeling.
    - ii. All flood models will be submitted to the City in electronic format.
  - e. As-Builts Model
    - i. Update the Corrected Final Design Model based on as-builts of the constructed project.
  - f. Request for LOMR
    - i. Prepare technical data and forms to submit a request for LOMR from FEMA. Tie-ins to the effective FEMA data are anticipated at sections 13781 and 18714, 400 feet up downstream of Bee Street and 1,400 feet upstream of Josey Lane, respectively.
    - ii. Coordinate with the City Farmer's Branch and the City of Carrollton to obtain a community acknowledgement for FEMA MT-2 Form 2.
    - iii. Submit request to FEMA. Current FEMA review fee is \$8,000.
    - iv. Submit public notifications to support the request for LOMR. OEI anticipates completing notifications via newspaper notification.
- 5. Final Design (90%)
  - a. Address comments from the Preliminary Design submittal.
  - b. Develop a final plan set at 10 to 50-foot scales, including full structural details, erosion control plan with details, all miscellaneous details, notes and specifications.
  - c. Provide a final design OPCC.
  - d. Meet with the City to discuss comments to the final design.
  - e. Provide 3 sets of plans and specifications for review.
- 6. Corrected Final Design (100%)
  - a. Address comments from the Final Design submittal.
  - b. Provide a specification manual using the City boiler plate.
  - c. Provide two hard copies of the corrected final plan sets and specifications.
  - d. Provide a CD with all PDF documents for bidding purposes.
- 7. Bid Phase Services
  - a. Assist CLIENT during the bid phase including attending the pre-bid meeting and responding to RFI's.

Hourly Services:

- 8. Construction Administration - Assist CLIENT during construction by commenting on RFI's and change orders (CLIENT to approve/disapprove), and conducting periodic site visits, at the CLIENT's request (five site visits have been budgeted for).

9. As-Builts

- a. Create as-built drawings based on contractor and City provided markups to the plans. No as-built survey is budgeted for.
- b. A CD of all documents in PDF, TIFF, and AutoCAD format shall be provided.

10. FEMA LOMR Coordination

- a. Coordinate review comments from FEMA by submitting requested data to FEMA.

**Project Deliverables**

Hydraulic Modeling

Technical Memo  
Request for Letter of Map Revision

Civil Plans

Cover Sheet, Location Map and Sheet Index Sheet (1)  
General Notes Sheet (1)  
Quantities Sheet (1)  
Existing Conditions Plan-Profile Sheets (5)  
Existing Conditions Plan-Profile Sheet at Bridge (1)  
Demolition Plan Sheets (3)  
Demolition Plan Sheet at Bridge (1)  
Proposed Improvements Plan-Profile Sheets (5)  
Proposed Improvements Plan-Profile Sheet at Bridge (1)  
Sanitary Sewer Plan-Profile Sheets (5)  
Erosion Control Plan Sheets (3)  
Erosion Control Plan Sheet at Bridge (1)  
Erosion Control Detail Sheets (3)  
Civil Detail Sheets (4)

Structural Plans

Wall Layout Sheets (6-8)  
Wall Detail Sheets (2-3)  
Bridge Layout Sheet (1)  
Bridge Estimated Quantities/Bearing Seat Elevations Sheet (1)  
Abutment Detail Sheets (1-2)  
Prestressed Slab Beam Layout Sheet (1)  
Slab Span Detail Sheet (1)  
TxDOT Details (10)

## Attachment B

### Cooks Creek Replacement – Payment Schedule

Basic Services – Services rendered for Basic Services as itemized specifically in attached Exhibit “A”, shall be billed monthly based on OEI estimate of the percentage of work completed. The City of Farmer’s Branch agrees to pay the following fees, itemized for reference purposes.

<b>BASIC SERVICES</b>	
<b>DESCRIPTION</b>	<b>TOTAL</b>
Data Gathering, Survey	<b>\$9,000</b>
Hydraulic Analysis - Design & Request for LOMR	<b>\$24,600</b>
Preliminary Plans	<b>\$135,000</b>
Pre-Final & Final Plans	<b>\$125,000</b>
Bid Phase Services	<b>\$6,000</b>
Meetings & Project Management	<b>\$21,000</b>
Reimbursable Expenses (including LOMR Notifications & FEMA LOMR Review Fee)	<b>\$10,000</b>
<b>TOTAL</b>	
	<b>\$330,600</b>

Hourly Services – Services described in attached Exhibit “A” not covered under Basic Services that the City requests be performed at an hourly rate (See rates below). OEI recommends setting the below budget.

<b>HOURLY SERVICES</b>	
<b>DESCRIPTION</b>	<b>NOT-TO-EXCEED AMOUNT</b>
Construction Administration	<b>\$15,000</b>
As-Builts	<b>\$5,500</b>
FEMA LOMR Coordination	<b>\$8,000</b>
<b>TOTAL</b>	
	<b>\$28,500</b>

The total engineering services provided by OEI shall not exceed **\$359,100**, unless modified through the terms of the contract.

<b>OEI Hourly Rate Table – January 2020</b>			
<b>Principal</b>	<b>\$350.00</b>	<b>Junior Engineer</b>	<b>\$110.00</b>
<b>Project Manager</b>	<b>\$200.00</b>	<b>Senior Designer</b>	<b>\$122.00</b>
<b>Senior Hydrologist</b>	<b>\$215.00</b>	<b>Senior CADD Tech</b>	<b>\$120.00</b>
<b>Senior Engineer</b>	<b>\$215.00</b>	<b>Tech II/CADD Operator</b>	<b>\$102.00</b>
<b>Project Engineer</b>	<b>\$170.00</b>	<b>Tech I/CADD Operator</b>	<b>\$88.00</b>
<b>Task Engineer</b>	<b>\$150.00</b>	<b>Support Staff</b>	<b>\$72.00</b>
<b>Staff Engineer</b>	<b>\$130.00</b>		