



PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made as of the Effective Date by and between **Birkhoff, Hendricks & Carter, L.L.P.**, hereinafter called "ENGINEER", and the **City of Farmers Branch, Texas**, hereinafter called "OWNER".

RECITALS

WHEREAS, OWNER desires ENGINEER to perform certain work and services set forth in Section 1, Scope of Services.

WHEREAS, ENGINEER has expressed a willingness to perform said work and services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Section 1, of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, OWNER and ENGINEER agree as follows:

Section 1. Scope of Services

Upon issuance of a written Notice to Proceed by OWNER, ENGINEER agrees to provide to OWNER the necessary professional engineering services related to the preparation of plans and specifications for the **Belt-Marsh Pump Station Improvements** as set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference ("the Scope of Services").

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and shall continue until ENGINEER completes the services required herein to the satisfaction of OWNER, unless sooner terminated as provided in Section 8, below.

Section 3. Engineer Obligations

- A. ENGINEER shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should OWNER require additional services not included under this Agreement, ENGINEER shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by OWNER; and without decreasing the effectiveness of the performance of services required under this Agreement.
- B. To the extent reasonably necessary for ENGINEER to perform the services under this Agreement, ENGINEER shall be authorized to engage the services of any agents, assistants,

persons, or corporations that ENGINEER may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of OWNER. The cost of such personnel and assistance shall be a reimbursable expense to ENGINEER only if authorized in writing in advance by OWNER.

- C. ENGINEER shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all services set forth in the Scope of Services.

Section 4. Payment

OWNER agrees to pay ENGINEER for all services authorized in writing and properly performed by ENGINEER in accordance with the Payment Schedule set forth in Exhibit "C", attached hereto and incorporated herein by reference, subject to additions or deletions for changes or extras agreed upon in writing. All fees paid to ENGINEER, by OWNER, shall be based on invoices submitted by ENGINEER for work performed monthly by OWNER, less any previous payments. Payments shall be made within 30 days of receipt of invoice by OWNER.

OWNER reserves the right to delay, without penalty, any partial payment when, in the opinion of OWNER, ENGINEER has not made satisfactory progress on the design of this Project based on the Scope of Services and the Completion Schedule Estimate.

The Total Engineering Fee shall be as specified in Exhibit "C," which shall not exceed **\$316,740.00**. OWNER may deduct from any amounts due or to become due to ENGINEER any sum or sums owing by ENGINEER to OWNER. In the event of any breach by ENGINEER of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against OWNER, or the OWNER's premises, arising out of ENGINEER's performance of this Agreement, OWNER shall have the right to retain out of any payments due or to become due to ENGINEER an amount sufficient to completely protect the OWNER from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by ENGINEER.

Section 5. Responsibilities

- A. ENGINEER shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by ENGINEER under this Agreement. ENGINEER shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.
- B. Neither OWNER's review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and

ENGINEER shall be and remain liable to OWNER in accordance with applicable law for all damages to OWNER caused by ENGINEER's negligent performance of any of the services furnished under this Agreement.

- C. The rights and remedies of OWNER under this Agreement are as provided by law.

Section 6. Time For Performance

- A. ENGINEER shall perform all services as provided for under this Agreement in a proper, efficient and professional manner in accordance with OWNER's requirements. As time is of the essence of this Agreement, such services shall be completed as provided in the Completion Schedule Estimate attached hereto as Exhibit "B," and incorporated herein by reference, after written Notification to Proceed from OWNER to ENGINEER, exclusive of OWNER and other governmental review time.
- B. In the event ENGINEER's performance of this Agreement is delayed or interfered with by acts of the OWNER or others, ENGINEER may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.
- C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to ENGINEER, unless ENGINEER shall have made written request upon OWNER for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless OWNER and ENGINEER have agreed in writing upon the allowance of additional time to be made.

Section 7. Documents

- A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by ENGINEER and its consultants, subcontractors, agents, representatives, and/or employees in connection with this Agreement ("Project Documents") are intended for the use and benefit of OWNER. ENGINEER and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, OWNER shall own, have, keep and retain all rights, title and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the ENGINEER) in and to all Project Documents, whether in draft form or final form, which are produced at OWNER's request and in furtherance of this Agreement. OWNER shall have full authority to authorize contractor(s), subcontractors, sub-subcontractors, OWNER consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the work or for any other purpose. All materials and reports prepared by ENGINEER in connection with this Agreement are "works for hire" and shall be the property of OWNER. OWNER shall have the right to publish, disclose,

distribute and otherwise use Project Documents in accordance with the Engineering Practice Act of the State of Texas (Texas Occupation Code, Chapter 1001, as amended) and/or Texas Occupations Code, Chapter 1051, as amended. ENGINEER shall, upon completion of the services and full payment for the ENGINEER'S services by the OWNER, or earlier termination and appropriate compensation as provided by this Agreement, provide OWNER with reproductions of all materials, reports, and exhibits prepared by ENGINEER pursuant to this Agreement in a TIFF, JPEG or PDF format, and a DXF format in current version of AutoCAD with NAD-83 coordinate format of all such instruments of service to the OWNER.

- B. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of OWNER. All instruments of service shall be professionally sealed as may be required by law or by OWNER.
- C. Acceptance and approval of the Project Documents by OWNER shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and Engineers for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by OWNER for any defect in the designs, working drawings and specifications, or other documents prepared by ENGINEER, its employees, contractor, agents and engineers.

Section 8. Termination

- A. OWNER may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to ENGINEER. In the event suspension or termination is without cause, payment to ENGINEER, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by OWNER to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to OWNER.
- B. Should OWNER require a modification of this Agreement with ENGINEER, and in the event OWNER and ENGINEER fail to agree upon a modification to this Agreement, OWNER shall have the option of terminating this Agreement and ENGINEER's services hereunder at no additional cost other than the payment to ENGINEER, in accordance with the terms of this Agreement, for the services reasonably determined by OWNER to be properly performed by ENGINEER prior to such termination date.

Section 9. Insurance

- A. ENGINEER shall provide and maintain Workman's Compensation and Employer's Liability Insurance for the protection of ENGINEER's employees, as required by law. ENGINEER shall also provide and maintain in full force and effect during the term of this Agreement, insurance

(including, but not limited to, insurance covering the operation of automobiles, trucks and other vehicles) protecting ENGINEER and OWNER against liability from damages because of injuries, including death, suffered by any person or persons other than employees of ENGINEER, and liability for damages to property, arising from or growing out of ENGINEER's operations in connection with the performance of this Agreement.

- B. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for one (1) person, and not less than One Million Dollars (\$1,000,000.00) for any one (1) occurrence. Insurance covering damages to property shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for any one (1) occurrence, and One Million Dollars (\$1,000,000.00) aggregate.
- C. ENGINEER shall also provide and maintain Professional Liability Insurance coverage to protect ENGINEER and OWNER from liability arising out of the performance of professional services, if any, under this Agreement. Such coverage shall be in the sum of not less than One Million Dollars (\$1,000,000.00).
- D. A signed Certificate of Insurance, satisfactory to OWNER, showing compliance with the requirements of this Section 9 shall be furnished to OWNER before any services are performed under this Agreement, and shall further indicate that each and every policy for liability insurance coverage as required herein includes a "Contractual Liability Coverage" endorsement covering the Agreement under Section 10, hereof. Such Certificate of Insurance shall provide for thirty (30) days written notice to OWNER prior to the cancellation or modification of any insurance referred to therein.

Section 10. Indemnification For Injury and Performance

ENGINEER hereby agrees to protect, defend, indemnify and hold harmless the OWNER, its officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, omission or neglect of ENGINEER, its officers, employees, servants, agents or subcontractors, or anyone else under ENGINEER's direction and control, and arising out of, occurring in connection with, resulting from or caused by the performance or failure of performance of any work or services called for by this Agreement, or from conditions created by the performance or non-performance of said work or services. In the event one or more of the Indemnities is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, ENGINEER shall be obligated to indemnify OWNER as provided herein on a proportionate basis in accordance

with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

Section 11. Indemnification For Unemployment Compensation

ENGINEER agrees that it is an independent contractor and not an agent of the OWNER, and that ENGINEER is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve OWNER of any responsibility or liability from treating ENGINEER's employees as employees of OWNER for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. ENGINEER further agrees to indemnify and hold OWNER harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of ENGINEER.

Section 12. Indemnification For Performance

ENGINEER shall defend and indemnify OWNER against and hold OWNER and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by ENGINEER in performing this Agreement.

Section 13. Assignment

ENGINEER shall not assign or sublet this Agreement, or any part thereof, without the prior written consent of OWNER.

Section 14. Applicable Laws

ENGINEER shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes relating or applicable to services to be performed under this Agreement. The laws of the State of Texas shall govern this Agreement; 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

Section 15. Default of ENGINEER

In the event ENGINEER fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by OWNER to ENGINEER, OWNER may, at its sole discretion without prejudice to any other right or remedy:

- A. Terminate this Agreement and be relieved of the payment of any further consideration to ENGINEER except for all work determined by OWNER to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of ENGINEER to and from meetings called by OWNER

at which ENGINEER is required to attend, but shall not include any loss of profit of ENGINEER. In the event, of such termination, OWNER may proceed to complete the services in any manner deemed proper by OWNER, either by the use of its own forces or by resubletting to others.

- B. OWNER may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of ENGINEER.

Section 16. Adjustments in Services

No claims for extra services, additional services or changes in the services will be made by ENGINEER without a written agreement with OWNER prior to the performance of such services.

Section 17. Execution Becomes Effective

This Agreement will be effective upon execution of the Agreement by and between ENGINEER and OWNER.

Section 18. Agreement Amendments

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

Section 19. 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 effect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 20. Independent Contractor

It is understood and agreed by and between the parties that ENGINEER in satisfying the conditions of this Agreement, is acting independently, and that the OWNER assumes no responsibility or liabilities to any third party in connection with ENGINEER's actions. All services to be performed by ENGINEER pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of OWNER. ENGINEER 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. There is no intended third party beneficiary to this Agreement.

Section 21. Right-Of-Access

OWNER will obtain and/or furnish right-of-access on any project site for ENGINEER to perform any required studies, surveys, tests or other necessary investigations in relation to any Task Order. ENGINEER will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.

Section 22. Notice

Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight 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 set forth herein:

If to OWNER:
(Physical Address)

Randy Walhood, Director of Public Works
City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234

(Mailing address):

P.O. Box 819010
Farmers Branch, TX 75381

(With copy to):

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If to ENGINEER:

John W. Birkhoff, P.E, Managing Partner
Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Ave., Suite 600
Dallas, Texas 75243

Section 23. Counterparts

This Agreement may be executed by the parties hereto 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.

Section 24. Exhibits

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

Section 25. Survival of Obligations

Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the _____ day of _____, 20_____.

OWNER:

City of Farmers Branch, Texas

By: _____
Gary D. Greer

Title: City Manager

P.O. Box 819010
Farmers Branch, Texas 75381-9010

ENGINEER:

Birkhoff, Hendricks & Carter, L.L.P.

By: 
John W. Birkhoff, P.E.

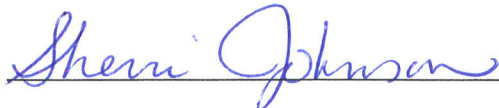
Title: Managing Partner

11910 Greenville Ave., Suite 600
Dallas, Texas 75243

WITNESS:

City Secretary

WITNESS:



APPROVED AS TO FORM:

City Attorney

EXHIBIT “A”

SCOPE OF SERVICES ***Belt-Marsh Pump Station Improvements***

PROJECT DESCRIPTION

This project will replace the standby generator, motor control center, and electrical system at the Belt-Marsh Pump Station and include a parking area, site lighting and landscape strip along Marsh Lane.

PART I. PRELIMINARY DESIGN

- A. Prepare site plan for paving improvements around station. Set vertical grade and horizontal layout. Include Alternate Additive bid item to replace entry driveway with reinforced concrete pavement.
- B. Regrade drainage ditch along south side of property adjacent to the apartment complex and include a reinforced concrete flume.
- C. Locate standby generator foundations on west side of pump station building.
- D. Size the standby generator to run two large pumps and motors.
- E. Size new pumps for the station:
 - One small pump at approximately 4.5 MGD, and
 - Two large pumps at approximately 9.0 MGD each.
- F. Size an automatic closed transition soft transfer switchgear to switch between the electrical utility and the standby generator.
- G. Reconfigure the interior of the ground floor of the pump station, removing the existing standby generator to allow locating the automatic closed transition soft transfer switchgear inside the existing building. Also make other floor plan modifications, as requested by the City, to enlarge the workspace within the existing exterior walls.
- H. Size and layout motor control centers.
- I. Replace pumps and motors in the basement along with isolation valves. Piping will remain along with check valves previously replaced.

- J. Complete Structural design of standby generator foundations and building modifications.
- K. Complete Architectural drawings of building modifications, including specifications for roof replacement.
- L. Complete Mechanical (HVAC and Plumbing), as required for building modifications.
- M. Complete a landscape plan and irrigation plan along Marsh Lane outside existing fence line and four trees immediately inside existing fence line.
- N. Complete construction phasing to keep pump station operational during upgrading and replacements, keeping shut-downs to a minimum.
- O. Prepare Technical Specifications.
- P. Submit five (5) sets of Preliminary Plans (11" x 17" sheet size) and Special Conditions to the City for review.
- Q. Meet with the City of Farmers Branch to discuss Preliminary Plans and Special Conditions.

PART II. FINAL DESIGN

- A. Revise and finalize Preliminary Plan Sheet and Specifications, incorporating City's comments.
- B. Formulate opinion of probable construction cost based on final plans.
- C. Prepare final bid documents, including bid proposal forms, construction plans, specifications and contract documents.
- D. Submit three (3) sets of Final Plans (11" x 17" sheet size), Special Conditions, and Contract Documents to the City.

PART III. BIDDING PHASE

- A. Assist the City of Farmers Branch staff in advertising for bids. This will include providing City with Notice to Contractors for their use in publicly advertising project. Birkhoff, Hendricks & Carter L.L.P. will fax or email notices to Dodge Reports, and to contractors experienced in this type of work.

- B. Sell bidding documents to potential bidders, suppliers and other parties.
- C. Provide one copy of bidding documents to publishers and plan rooms, and City's independent testing lab.
- D. Assist City of Farmers Branch during opening of bids and provide bidding tally sheets.
- E. Provide bid tabulation to City and contractors who submit bids.
- F. Formulate opinion from information received and provide the City a recommendation for award of the construction contract.
- G. After award of contract, furnish ten sets of prints of the final plans, specifications and contract documents to the City for construction use by the City and Contractor.
- H. Conduct Pre-Construction Conference at City facilities including preparing an agenda.

PART IV. CONSTRUCTION PHASE

- A. Attend City's coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination. Prior to or immediately after coordination meeting make site visit to project location.
- B. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review of shop drawing submissions is solely for their conformance with the design intent and conformance with information given in the construction documents. Birkhoff, Hendricks & Carter L.L.P. shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operation of construction, safety precautions and programs incidental thereto, all of which are the Contractors responsibility. Shop drawings in which no exceptions are taken by Birkhoff, Hendricks & Carter L.L.P. will be provided to the City electronically.

- C. Provide City two (2) tablets to handle shop drawings electronically.
- D. Provide written responses to requests for information or clarification.
- E. Accompany the City during their final inspection of the project.
- F. Recommend acceptance of work based on information from City's on-site representative.
- G. Visit the site at appropriate intervals as construction proceeds to observe progress and formulate opinion as to quality of work as it relates to contract documents.
- H. Review the City's on-site representative's daily reports and independent laboratory's test reports to formulate opinion of progress and attempt to identify potential problems.

PART V. ADDITIONAL SERVICES

Field surveys for paving improvements.

PART VI. EXCLUSIONS

The intent of this section is to specifically exclude from this Agreement the following:

- A. Providing an on-site representative.
- B. Construction testing and inspections.
- C. Environmental impact statements and assessments.
- D. Fees for permits or advertising.
- E. Certification that work is in accordance with plans and specifications.
- F. Environmental cleanup.
- G. Phasing of Contractors work.
- H. On-site safety precautions, programs and responsibility.

EXHIBIT “B”

COMPLETION SCHEDULE ESTIMATE

Belt-Marsh Pump Station Improvements

Notice to Proceed from City	October 4, 2013
Complete Preliminary Plans and Technical Specifications	March 21, 2014
Receive Comments from City	April 11, 2014
Complete Final Plans and Technical Specifications	May 23, 2014
Advertise Project	June 2014
Receive Bids	June 2014
Award Contract	July 2014
Notice to Proceed	August 2014
Order Equipment	August 2014–November 2014
Construction On-Site	November 2014–August 2015

EXHIBIT "C"

PAYMENT SCHEDULE *Belt-Marsh Pump Station Improvements*

Payment for engineering services described under Part I shall be based on a lump sum amount of **\$326,000.00:**

Payment for engineering services described under Parts II and III shall be based on the following hourly fee schedule:

FEE SCHEDULE

Classification/Task	Straight Time (Rate)
Project Engineer	\$230.00
Design Engineer	\$140.00
Electrical Engineer	\$140.00
AutoCAD III	\$130.00
AutoCAD II	\$112.00
Word Processor	\$103.00
Survey Crew	\$155.00
Expenses	Invoice Cost x 1.15
Plotting Services	\$5.00 /plot
Mileage	IRS Limit ¢/mile

SUMMARY OF PARTS III, IV and V:

<u>Task</u>	<u>Budget</u>
Bidding Phase (Budget)	\$4,500.00
Construction Administration (Budget)	\$7,000.00
Field Surveys	<u>\$1,240.00</u>
Subtotal:	\$12,740.00

Total fee not to exceed **\$338,740.00** unless authorized by City.

Opinion of Probable Construction Cost: \$3,250,000.00