



## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made as of the Effective Date by and between **O'Brien Engineering, Inc.**, hereinafter called "ENGINEER" or "OEI", and the **City of Farmers Branch, Texas**, hereinafter called "OWNER" or "City".

### 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 **Cooks Creek Channel Improvements** as set forth in the Scope of Services attached hereto as Attachment "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**

A. 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 Attachment "B," 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 ENGINEER, less any previous payments. Payments shall be made within 30 days of receipt of invoice by OWNER.

B. 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.

C. The Basic Services Engineering Fee shall be as specified in Attachment "B," for a lump sum amount not to exceed **\$82,300** and additional requested services shall be provided on an hourly basis for a not-to-exceed amount of **\$15,500**. Total Engineering Fee shall not exceed **\$97,800**. 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 within ninety (90) calendar days 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 during the term hereof maintain in full force and effect the following insurance:

(i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the ENGINEER's performance of services 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;

(ii) an automobile liability insurance policy covering any vehicles owned and/or operated by ENGINEER, 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 and aggregate for bodily injury and property damage;

(iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of ENGINEER'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 covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$3,000,000.00 per claim and \$5,000,000.00 in the aggregate.

B. All insurance and certificate(s) of insurance shall contain the following provisions:

(i) name the CITY, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability;

(ii) provide for at least thirty (30) days prior written notice to the CITY for cancellation of the insurance; and

(iii) provide for a waiver of subrogation against the 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.

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.

D. A certificate of insurance evidencing the required insurance and all endorsements shall be delivered to CITY prior to commencement of services.

#### **Section 10. Indemnification.**

**ENGINEER HEREBY COVENANTS AND CONTRACTS TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS OWNER, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH ENGINEER 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 THE PROFESSIONAL'S LIABILITY. The ENGINEER'S OBLIGATIONS UNDER THIS SECTION 10 SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY ENGINEER UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

#### **Section 11. Assignment**

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

## **Section 12. 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 13. 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 and shall in no case exceed the maximum amount to be paid in accordance with Section 4, above. 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 subletting 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 14. 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 15. Execution becomes Effective**

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

## **Section 16. Agreement Amendments**

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. 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 17. 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.

**Section 18. 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 19. 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 20. 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:

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

P.O. Box 819010  
Farmers Branch, TX 75381

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

Joshua McClure, PhD, PE, CFM, PMP  
Vice President of Operations  
O'Brien Engineering, Inc.  
2340 E Trinity Mills Blvd, Suite 220  
Carrollton, TX 75006

**Section 21. 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 22. Exhibits and Attachments.**

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

## Section 23. 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.

**Section 24. Prohibition of Boycott Israel.**

ENGINEER 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.

(Signature page to follow)



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

OWNER:  
**City of Farmers Branch, Texas**

ENGINEER:  
**O'Brien Engineering, Inc.**

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

By: \_\_\_\_\_  
Joshua McClure  
Vice President of Operations

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Amy Piukana, City Secretary

APPROVED AS TO FORM:

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

## **Attachment A**

### **Cooks Creek Replacement – Scope of Services**

#### **Project Description**

The Project will result in replacement of the concrete channel sloped wall and channel bottom along Cooks Creek (“the Creek”) between Bee Street and Valwood Parkway. The stretch of Creek within the project area encompasses approximately 2200 linear feet within the Creek banks, as well as a 50-foot street right-of-way area. The creek right-of-way abuts houses along Rugby Lane, Albemarle Drive, and Springvale Drive. The primary purpose of this Project will be to replace the channel wall throughout the Project area with a wall that is properly founded and will resist lateral movement and damage to the existing channel bottom and adjacent utilities.

No utility modifications or relocations are expected, aside from storm sewer outfalls and manhole lids. The City will also be contracting with GEE Consultants, Inc. to conduct geotechnical testing for the Project.

OEI shall investigate possible improvements to the Creek channel and Bee Street culverts to reduce flooding upstream of Bee Street. One alternative will be modeled that improves flow through/over Bee Street and widens the Creek channel the maximum feasible amount, given site conditions. No floodplain changes are expected based upon the City’s current intent, so no FEMA permitting is required. If it is decided to widen the Creek channel, or modify the Bee Street crossing, then additional services and fees will be required.

Additionally, OEI will assist City during the bidding and construction phases of the Project, commenting on Requests for Information as well as attending the pre-bid meeting and an anticipated five (5) site visits. No construction supervision is included with this Scope of Services.

#### **Project Scope of Services**

##### **Basic Services:**

1. Data Gathering
  - a. GIS Data – Gather available GIS data including parcel data, utilities, and LIDAR.
2. Survey
  - a. Obtain control from City of Farmers Branch GPS control monuments.
  - b. Obtain a topographic survey of the Creek channel from fence to fence.
  - c. Field locate all above ground utilities, structures, concrete paths and concrete channels.
  - d. Obtain the final plats of the property within and adjacent to the Project area and locate monumentation enough to locate the boundaries of the

- dedicated channel area.
- e. Elevations for the tops and bottoms of the concrete channel will be obtained every 75 feet.
- f. Survey and all drawings shall be set to NAD 1983 coordinate system.

### 3. Hydraulic Modeling

- a. Duplicate Effective Model
  - i. Review the effective hydraulic model to verify the modeled Creek channel dimensions and determine velocities and other engineering parameters.
  - ii. The Effective Model flows will be used throughout this Project.
- b. Corrected Effective Model
  - i. Using the Duplicate Effective Model as the basis, develop a Corrected Effective Model that corrects hydraulic modeling issues through the project area and reflects existing channel geometry.
- c. Proposed Conceptual Model
  - i. Using the Corrected Effective Model as the base, develop a Proposed Condition Model that widens the Creek channel and improves the Bee Street crossing.
- d. Technical Memo
  - i. Prepare a technical memo summarizing the hydraulic modeling and potential floodplain reduction based on the Proposed Conceptual Model.
  - ii. Exhibits will be included reflecting the Effective, Corrected Effective, and Proposed Conceptual floodplains.
  - iii. These exhibits will utilize available LIDAR data and will estimate which houses are in the floodplain in each scenario.
  - iv. All flood models will be submitted to the City on CD.

### 4. Preliminary Design

- a. Develop a preliminary plan set at 10-foot to 50-foot scales, including structural engineer designed sections and key details.
- b. Not all structural or civil plans will be fully detailed at this stage.
- c. Provide a design report and cost estimate 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.

### 5. Final Design

- a. Address comments from the Preliminary Design submittal.
- b. Develop a final plan set at 10-foot to 50-foot scales, including full structural details, erosion control plan with details, all miscellaneous details, notes and specifications.
- c. Provide a final design report and cost estimate.
- 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

- 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.

Hourly Services:

1. Bid Phase Services
  - a. Assist City during the bid phase including attending the pre-bid meeting and responding to requests for information.
2. Construction Administration - Assist City during construction by commenting on requests for information and change orders (City to approve/disapprove), and conducting periodic site visits, at City's request (five site visits have been budgeted).
3. 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.

## 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.

BASIC SERVICES	
DESCRIPTION	TOTAL
Data Gathering, Survey, Preliminary Design, Final Design	<b>\$74,100</b>
Hydraulic Modeling	<b>\$8,200</b>
<b>TOTAL</b>	<b>\$82,300</b>

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

HOURLY SERVICES	
DESCRIPTION	NOT-TO-EXCEED AMOUNT
Bid Phase Services	<b>\$4,200</b>
Construction Administration	<b>\$7,700</b>
As-Builts	<b>\$3,600</b>
<b>TOTAL</b>	<b>\$15,500</b>

The total engineering services provided by OEI shall not exceed **\$97,800**, unless modified through the terms of the contract.

OEI Hourly Rate Table - May 2018			
<b>Principal</b>	<b>\$207.00</b>	<b>Junior Engineer</b>	<b>\$97.00</b>
<b>Project Manager</b>	<b>\$190.00</b>	<b>Senior Designer</b>	<b>\$115.00</b>
<b>Senior Hydrologist</b>	<b>\$183.00</b>	<b>Senior CADD Tech</b>	<b>\$104.00</b>
<b>Senior Engineer</b>	<b>\$162.00</b>	<b>Tech II/CADD Operator</b>	<b>\$91.00</b>
<b>Project Engineer</b>	<b>\$151.00</b>	<b>Tech I/CADD Operator</b>	<b>\$80.00</b>
<b>Task Engineer</b>	<b>\$134.00</b>	<b>Support Staff</b>	<b>\$67.00</b>
<b>Staff Engineer</b>	<b>\$118.00</b>		