

CITY OF ALVARADO  
104 W. COLLEGE  
March 17, 2014  
6:30 P.M.

AGENDA

The City Council of the City of Alvarado will meet in a Regular Session on Monday, March 17, 2014 at 6:30 p.m. in the Council Chambers at City Hall. Up to the first thirty minutes of the meeting will be a public work session for staff briefing of the Council on agenda items listed below.

CALL TO ORDER- Roll Call

Page No.

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

The City Council invites citizens to speak on any topic.

**Unless the item is specifically noted on this agenda, the City Council is required under the Texas Open Meetings Act to limit its response to one of the following:**

- \* **Responding with a statement of specific factual information or reciting the City's existing policy on that issue; or**
- \* **Directing the person making the inquiry to visit with City Staff about the issue. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.**

CONSENT AGENDA:

- |                                                                                                                                                                                                                                                                                                                                           |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| A. Minutes, Regular Meeting February 17, 2014.                                                                                                                                                                                                                                                                                            | 1  |
| PROCLAMATION Poison Prevention Week – March 16-22, 2014                                                                                                                                                                                                                                                                                   | 5  |
| 1. Officer Recognition                                                                                                                                                                                                                                                                                                                    |    |
| 2. Consideration and action regarding an ordinance canceling the May 10, 2014 General Election and declaring each unopposed candidate elected to office.                                                                                                                                                                                  | 6  |
| 3. Public Hearing and consideration and action regarding an ordinance approving a request to rezoning property described as Lots 6-10, Block 41, Original Town Addition, Alvarado, Johnson County, Texas, and also known as 300 S. Sparks from an SF-2 (Single Family Residential) zoning district to a Commercial (C-1) zoning district. | 11 |

4. Consideration and action regarding a contract between Urban Safety Assessment and the City of Alvarado for third party gas well inspections. 16
5. Consideration and action regarding partial exemption racial profiling report. 19
6. Consideration and action regarding award of bid for S. Cummings, Cotter Street, and S. Spears sanitary sewer project. 23
7. Consideration and action regarding easement agreements a water transmission Line located on Tract 3, Abstract 516, H. Lewis Survey and property Located at 7100 CR 604. 27
8. Consideration and action regarding an easement agreement for a regional lift station and sanitary sewer lines located on Lot 2, Block 1, Burger King Addition and Tracts II, III, V, VI, VII and VIII, J. Dixon Survey, Abstract 214. 29
9. Consideration and action regarding economic development negotiations with Scrap Rubber 2 Oil. 34
10. Consideration and action concerning a contract for services from Childress Engineers for the Community Development Block Grant funded for improvements in Alvarado Hills Addition. 35

## EXECUTIVE SESSION

Pursuant to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may convene in Executive Session to deliberate regarding the following matters.

- a. §551.071 Consultation with Attorney The City Council may convene in Executive Session to conduct a private consultation with its Attorney on any legally posted agenda item, when the City Council seeks the advice of its Attorney about pending or contemplated litigation, a settlement offer, or on a matter in which the duty of the Attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provision of Chapter 551, including the following items:
  1. Any posted agenda item.

## CITY MANAGER'S REPORT

## COUNCIL COMMENTS

Pursuant to LGC Section 551.0415, City Council Members may make a report about items of Community interest during a meeting of the governing body without having given notice of the report. Items of community interest include:

- \* Expressions of thanks, congratulations, or condolence;
- \* Information regarding holiday schedules;
- \* An honorary or salutory recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of the person's public office of public employment is not an honorary or salutory recognition for purposes of this subdivision;
- \* A reminder about an upcoming event organized or sponsored by the governing body;
- \* Information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and
- \* Announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

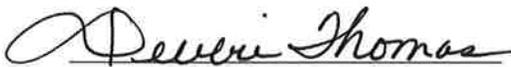
11. Adjourn

ACCESSIBILITY STATEMENT

The Alvarado City Hall and Council Chamber are wheelchair accessible. The exit and parking ramps are located in the front of the building. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 817-790-3351, FAX: 817-783-7925, e-mail: [thomasd@cityofalvarado.org](mailto:thomasd@cityofalvarado.org). Please call at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

NON-DISCRIMINATION STATEMENT

The City of Alvarado does not discriminate on the basis of race, color, national origin, sex, religion, or disability in the employment or the provision of services. I, the undersigned authority do hereby certify that the above Agenda was posted on the bulletin board in the City Hall of the City of Alvarado, Texas, a place convenient and readily accessible to the general public at all times and said Agenda was posted on March 14, 2014 at 4:30 P.M. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.



Debbie Thomas, TRMC  
City Secretary

# CITY OF ALVARADO

## County of Johnson

## State of Texas

February 17, 2014

### MINUTES

The City Council of the City of Alvarado met in Regular Session on Monday, February 17, 2014 at 7:10 p.m. in the Council Chambers at City Hall with up to the first thirty minutes of the meeting consisting of a workshop. The following were present for roll call:

|                 |   |               |
|-----------------|---|---------------|
| Shawn Goulding  | * | Councilperson |
| Joe Sain        | * | Mayor Pro Tem |
| David Bayless   | * | Councilperson |
| Arrdeen Vaughan | * | Councilperson |

**Absent:**

|                  |   |               |
|------------------|---|---------------|
| Dewayne Richters | * | Mayor         |
| Jacob Wheat      | * | Councilperson |
| Tom Moore        | * | Councilperson |

**Others Present:**

|                    |   |                       |
|--------------------|---|-----------------------|
| Clint Davis        | * | City Manager          |
| Debbie Thomas      | * | City Secretary        |
| Brad Anderson      | * | Chief of Police       |
| Richard Van Winkle | * | Fire Chief            |
| Michael Dwiggins   | * | Public Works Director |

### **INVOCATION**

Mayor Pro Tem Joe Sain called this regular meeting to order at 7:00 P.M. and City Manager Clint Davis gave the invocation.

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENTS**

There were no public comments at this meeting.

### **CONSENT AGENDA**

Motion was made by Councilperson Shawn Goulding, duly seconded by Councilperson David Bayless, to approve the Consent Agenda. This motion supported four votes in approval and zero votes opposed. Motion carried.

**CONSIDERATION AND ACTION REGARDING THE PRESENTATION OF THE ANNUAL AUDIT FOR FISCAL YEAR ENDING SEPTEMBER 30, 2013.**

Gil Vollmering from Waters, Vollmering & Associates, LLP presented the annual audit for the year ending September 30, 2013 to the council. He stated that the city was in very good financial condition. Motion was made by Councilperson Davis Bayless, duly seconded by Councilperson Ardeen Vaughan to accept the annual audit for year ending September 30, 2013. This motion supported four votes in approval and zero votes opposed. Motion carried.

**PUBLIC HEARING AND CONSIDERATION AND ACTION REGARDING AN ORDINANCE APPROVING A REQUEST TO REZONING PROPERTY DESCRIBED AS ABSTRACT 770, TRACT 35, A. SPIVA SURVEY, ALVARADO, JOHNSON COUNTY, TEXAS, AND ALSO KNOWN AS 100, 102, AND 104 LENARD LANE FROM AN SF-2 (SINGLE FAMILY RESIDENTIAL) TO A MH-1 (MOBILE HOME) ZONING DISTRICT.**

Mayor Pro Tem Joe Sain opened the Public Hearing at 7:04 p.m. Clint Davis, City Manager, explained to the council that this area an agricultural area and that there are currently two mobile homes on this site and that water and sewer were available for a new home. Mayor Pro Tem Joe Sain then closed the Public Hearing at 7:07 p.m. Motion was made by Councilperson Shawn Goulding, duly seconded by Councilperson David Bayless, to approve an ordinance rezoning property described as Abstract 770, Tract 35, A. Spiva Survey, Alvarado, Johnson County, Texas also known as 100, 102 and 104 Lenard lane from an SF-2 (Single Family Residential) zoning district to a MH-1 (Mobile Home) zoning district. This motion supported four votes of approval and zero votes opposed. Motion carried.

**CONSIDERATION AND ACTION REGARDING AN ORDINANCE OF THE CITY OF ALVARADO, TEXAS, AMENDING THE CODE OF ORDINANCES BY ADOPTING REGULATIONS PROHIBITING THE POSSESSION AND PURCHASE OF ELECTRONIC VAPING DEVICES BY MINORS AND THE SALE AND DISTRIBUTION OF ELECTRONIC VAPING DEVICES TO MINORS.**

Motion was made by Councilperson Ardeen Vaughan, duly seconded by Councilperson Shawn Goulding, to authorize an ordinance amending the code of ordinances by adopting regulations prohibiting the possession and purchase of electronic vaping devices by minors and the sale and distribution of electronic vaping devices to minors. This motion supported four votes in approval and zero votes opposed. Motion carried.

**CONSIDERATION AND ACTION REGARDING FUNDING FOR  
ADDITIONAL CONCRETE WORK FOR THE PROJECT AT THE PARKS  
WAGON BARN.**

No action was taken on this item.

**CONSIDERATION AND ACTION REGARDING POSSIBLE PURCHASE OF  
PROPERTY LOCATED AT LOTS 3, 4 AND 5, BLOCK 73, ORIGINAL TOWN  
ADDITION WHICH WAS SOLD TO NEXLOTS IN NOVEMBER, 2013.**

Clint Davis, City Manager, explained to the council that there was no council action and rezoning making this property a city park. After discussion, motion was made by Councilperson David Bayless, duly seconded by Councilperson Shawn Goulding, to not proceed with the repurchase of this property. This motion supported four votes of approval and zero votes opposed. Motion carried.

**CONSIDERATION AND ACTION REGARDING AN ORDINANCE  
AMENDING ARTICLE II OF CHAPTER 14 OF THE ALVARADO CODE OF  
ORDINANCES TO DECLARE DONATION CONTAINERS TO BE A  
NUISANCE.**

Motion was made by Councilperson David Bayless, duly seconded by Councilperson Shawn Goulding to approve an ordinance amending Article II of Chapter 14 of the Alvarado Code of Ordinances to declare donation containers a nuisance. This motion supported four votes of approval and zero votes opposed. Motion carried.

**CONSIDERATION AND ACTION REGARDING AN ORDINANCE  
AMENDNIG SECTION 38-128 OF THE ALVARADO CODE OF  
ORDINANCES; ESTABLISHING THE MAXIMUM PRIMA FACIE SPEED  
LIMIT ON STONEGATE BOULEVARD, LIMESTONE DRIVE, STONEWOOD  
WAY, FOSSIL WAY, PEBBLECREEK WAY, BRIARSTONE DRIVE,  
BOULDER CREEK DRIVE, ROCKHAVEN DRIVE AND LAKEVIEW DRIVE  
AS TWENTY MILES PER HOUR.**

Motion was made by Councilperson Shawn Goulding, duly seconded by Councilperson David Bayless to approve an ordinance amending Section 38-128 of the Alvarado Code of Ordinances; establishing the maximum prima facie speed limit on Stonegate Boulevard, Limestone Drive, Stonewood Way, Fossil Way, Pebblecreek Way, Briarstone Drive, Boulder Creek Drive, Rockhaven Drive and Lakeview Drive as twenty miler per hour. This motion supported four votes of approval and zero vote opposed. Motion carried.

Minutes  
Regular Council Meeting  
February 17, 2014  
Page Four

**PRESENTATION FROM PLUS5 REGARDING POSSIBLE BUSINESS VENTURE TO BE RELOCATING TO THE CITY OF ALVARADO.**

Mr. Paul Andrade from Plus5 presented a presentation to the council.

Councilperson Ardeen Vaughan left the meeting at 7:45 p.m.

**EXECUTIVE SESSION**

There was no executive session held at this meeting.

**ADJOURNMENT**

Mayor Pro Tem Joe Sain then adjourned this regular meeting of the Alvarado City Council at 8:02 p.m.

Passed and approved this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor Pro Tem Joe Sain

ATTEST:

\_\_\_\_\_  
Debbie Thomas, TRMC  
City Secretary

## *A PROCLAMATION*

**Whereas**, our society has become increasingly dependent on household chemicals to perform labor-saving, time-saving miracles; and on medicine to provide health-giving, life-sustaining benefits;

**Whereas**, these products, when not used as intended or directed, may be hazardous, particularly if children gain access to them;

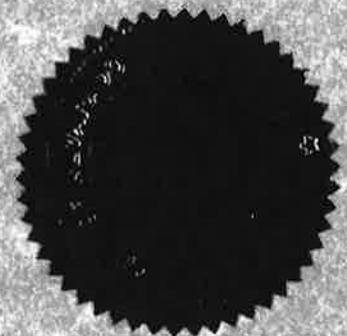
**Whereas**, over the past 52 years, the nation has been observing Poison Prevention Week to call attention to these hazards and how proper handling and disposal of these substances and proper use of safety packaging can help eliminate them;

**Whereas**, the efforts of our community organizations, complemented by the efforts of the North Texas Poison Center have reduced childhood poisonings in, Alvarado Texas.

**Whereas**, the North Texas Poison Center, a regional poison center, located at Parkland Health & Hospital System, provides the ultimate in human service programming, immediate, accessible emergency information to save lives of victims of poison-related emergencies, and;

**Whereas**, these programs must continue as long as even one child swallows a household product or medicine by mistake.

**Now, Therefore**, I, E. Dewayne Richters , Mayor of the City of Alvarado, do hereby proclaim the week of March 16-22, 2014, as Poison Prevention Week in this city. Further, I direct the appropriate agencies in our local government to continue their cooperation with concerned citizens and community organizations, including our schools, to develop programs which will alert our people to the continued danger of misusing medicines and household products and to promote effective safeguards against accidental poisonings among young children.



# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council  
**From:** Debbie Thomas, City Secretary  
**Date:** March 14, 2014  
**Subject:** Cancellation of the May 10, 2014 General Election and declaring each unopposed candidate elected to office.

There are no contested races for the city council wards for the May 10, 2014 General Election. In your packet you will find the certification of unopposed candidates and Ordinance 2014-006 which cancels the general election which was to be held on May 10, 2014.

Staff recommends approval of the attached ordinance and cancellation of the election.

**CERTIFICATION OF UNOPPOSED CANDIDATE**  
**CERTIFICACION DE CANDIDATOS UNICOS**

**To: Presiding Office of Governing Body**  
**Al: Presidente de la entidad gobernante**

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on May 10, 2014.

*Como autoridad a cargo de la preparacion de la bolero e votacion oficial, por la presente certifico que los siguientes candidatos son candidatos unicos para eleccion para n cargo en la eleccion que se llevara a cabo el 10 Mayo, 2014.*

**List of offices and names of candidates:**  
**Lista de cargos y nombres de los candidatos:**

| <b>Office(s) Cargos(s)</b>  | <b>Candidate(s) Candidato(s)</b> |
|-----------------------------|----------------------------------|
| City Councilperson Ward I   | Michael Bennett                  |
| City Councilperson Ward II  | Arrdeen Vaughan                  |
| City Councilperson Ward III | Jacob Wheat                      |
| Mayor                       | E. Dewayne Richters              |

  
Signature (*Firma*)

DEBBIE THOMAS  
Printed Name (*Nombre en letra de molde*)

CITY SECRETARY  
Title (*Puesto*)

3-4-2014  
Date of signing (*Fecha de firma*)



**ORDINANCE NO. 2014-006**

**AN ORDINANCE CANCELING THE MAY 10, 2014 GENERAL ELECTION AND DECLARING EACH UNOPPOSED CANDIDATE ELECTED TO OFFICE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Alvarado, Texas is a Type A general-law municipality located in Johnson County, operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS,** in accordance with law a general election has been ordered for May 10, 2014 for the purpose of electing council members to serve on the city council in the City of Alvarado; and

**WHEREAS,** no proposition is to appear on the ballot in that general election; and

**WHEREAS,** the city secretary has certified in writing that each candidate on the ballot is unopposed for election to office; and

**WHEREAS,** the filing deadlines for placement on the ballot and declaration of a write-in candidacy have passed; and

**WHEREAS,** in these circumstances, Subchapter C of Chapter 2 of the Election Code authorizes a governing body to declare each unopposed candidate elected to office and cancel the election; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVARADO, TEXAS, THAT:**

**SECTION 1:** The City of Alvarado hereby cancels the election scheduled to be held on Saturday, May 10, 2014 in accordance with Section 2.053(a) of the Texas Election Code. The following candidates have been certified as unopposed and are hereby elected as follows:

El City of Alvarado por la presente cancela la eleccion que, de lo contrario dias Mayo 2014 de conformidad, con la Seccion 2.053(a) delCodigo de Elecciones de Texas. Los siguientes candidates han sido certificados como candidates unicos y por la present quedan elegidos como se haya indicado a continuacion:

**Candidate (Candidato)**

**Office Sought (Cargo al que presenta candidatura)**

Mayor  
Michael Bennett  
Arrdeen Vaughan  
Jacob Wheat

E. Dewayne Richters  
Councilperson Ward I  
Councilperson Ward II  
Councilperson Ward III

**SECTION 2:** The general election previously ordered for May 10, 2014 for the purpose of electing council members to serve on the city council for the City of Alvarado is hereby cancelled.

**SECTION 3:** A copy of this order will be posted on Election Day at each polling place that would have been used in this election.

El Dia de las Elecciones se exhibira una copia de esta orden el todas las mesas electorales que se hubieran utilizado en la elleccion.

**SECTION 4:** This ordinance shall be cumulative of all provisions of ordinances of the City of Alvarado, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**SECTION 5:** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 6:** This ordinance shall be in full force and effect from and after its passage, and it is so ordained.

**AND IT IS ORDAINED.**

Passed on this the 17th day of March, 2014, by a vote of \_\_\_\_ to \_\_\_\_.

**CITY OF ALVARADO**

By: \_\_\_\_\_  
E. Dewayne Richters, Mayor

ATTEST:

\_\_\_\_\_  
Debbie Thomas, City Secretary

Approved as to form and legality:

\_\_\_\_\_  
Steve Wood, Attorney

# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council Members

**From:** Debbie Thomas, City Secretary 

**Date:** March 14, 2014

**Subject:** Public Hearing and consideration of the rezoning of Lots 6 thru 10, Block 41, Original Town Addition, also known as 300 S. Sparks from an SF-2 (Single Family Residential) zoning district to a C-1 (Commercial) zoning district.

Gary Lee, owner of the property located at 300 S. Sparks would like to rezone this property to a commercial zoning district in order to operate a boutique. The property across the street is a commercial district and the property behind is the Methodist church.

The Planning and Zoning Commission votes unanimously to approve.

# CITY OF ALVARADO

## APPLICATION FOR ZONING CHANGES

DATE: Jan 22 2014 CLERK: XXX FEE: 400.<sup>00</sup> CASE NO: 2014-0091

NAME OF APPLICANT: GARY L Lee / Samantha LEE PH: (817) 526-0125

MAILING ADDRESS: 8701 FM 3136, Alvarado, Tx 76009

APPLICANT IS THE: OWNER LEASER / PURCHASER OF THE PROPERTY.

NAME OF OWNER: Gary & Samantha Lee PH: (817) 526-0125  
circle one 817-657-3737

MAILING ADDRESS: (300 S Sparks) 8701 FM 3136, Alvarado, TX

STREET ADDRESS OF PROPERTY: 300 S Sparks ACREAGE: .78 .7152

LEGAL DESCRIPTION: Lot 6-10 BLK 41 ORIGINAL TOWN

PRESENT ZONE OF PROPERTY: Residential PRESENT USE: Vacant

REQUESTED ZONE: Commercial PROPOSED USE: Retail

REASON FOR CHANGE: would like to open a retail store

USAGE OF ADJACENT PROPERTY NORTH: Fire Dept - Residential

SOUTH: Residential

EAST: Commercial / Res

WEST: Church / Commercial

Add SUP for caretaker's quarters upstairs.

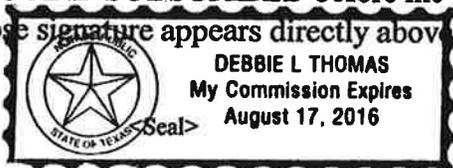
**NOTE:** If the property can be identified by the subdivision or addition please include that with the lot and block numbers as the legal description. You must also attach a copy of the appropriate portion of the subdivision or addition plat with the subject property clearly indicated on it. If property is not part of a subdivision or addition plat, give the complete metes and bounds description of the property and indicate the location of said property by identifying one or more adjacent tracts and/or rights-of-way or attach a surveyor's plat of the property.

APPLICANT'S SIGNATURE: Samantha Lee

The undersigned hereby, on oath, states that he or she is the record owner of the property for which this application is made.

OWNER: Samantha Lee

SWORN TO AND SUBSCRIBED before me this 22nd day of January, 2014, by the person whose signature appears directly above



Debbie Thomas

Notary Public in and for The State of Texas.  
My Commission expires 8-17-2016



## 300 S Sparks

**Print Date:** 02/26/2014  
**Image Date:** 12/24/2012  
**Level:** Neighborhood

**ORDINANCE NO. 2014-006**

**AN ORDINANCE OF THE CITY OF ALVARADO, TEXAS, REZONING BLOCK 41, LOTS 6 THRU 10, ORIGINAL TOWN ADDITION, ALSO KNOWN AS 300 SOUTH SPARKS, ALVARADO, JOHNSON COUNTY, TEXAS, FROM SF-2 (SINGLE FAMILY RESIDENTIAL) ZONING DISTRICT TO AN C-1 (COMMERCIAL) ZONING DISTRICT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** notice of a hearing before the Planning and Zoning Commission was sent to real property owners within 200 feet of the property herein described at least 10 days before such hearing; and

**WHEREAS,** notice of a public hearing before the City Council was published in a newspaper of general circulation in Alvarado at least 15 days before such hearing; and

**WHEREAS,** public hearings to change the zoning on the property herein described were held before both the Planning and Zoning Commission and the City Council, and the Planning and Zoning Commission has heretofore made a recommendation concerning the zone change; and

**WHEREAS,** the City Council is of the opinion that the zone change herein effectuated furthers the purpose of zoning as set forth in the Comprehensive Zoning Ordinance and is in the best interest of the citizens of the City of Alvarado; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVARADO, TEXAS:**

**SECTION 1:** THAT the Comprehensive Zoning Ordinance and the Zoning Map of the City of Alvarado are hereby amended by rezoning Block 41, Lots 6 thru 10, Original Town Addition, also known as 300 South Sparks, Alvarado, Johnson County, Texas from "SF-2" (Single Family Residential) zoning district to a "C-1" (Commercial) zoning district.

**SECTION 2:** This ordinance shall be cumulative of all provisions and ordinances of the Code of Ordinances of the City of Alvarado, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 3:** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be

declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4:** Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance involving zoning, fire safety, or public health and sanitation shall be fined not more than Two Thousand Dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 5:** The City Secretary of the City of Alvarado is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance one time in the official newspaper of the City, as authorized by Section 52.011 of the Local Government Code.

**SECTION 6:** This ordinance shall be in full force and effect from and after its passage and publication as required by law.

**AND IT IS SO ORDAINED.**

Passed on this 17th day of March, 2014, by a vote of \_\_\_\_\_ to \_\_\_\_\_.

**ATTEST:**

**CITY OF ALVARADO**

\_\_\_\_\_  
**Debbie Thomas, City Secretary**

By: \_\_\_\_\_  
**E. Dewayne Richters, Mayor**

**Approved as to form and legality:**

\_\_\_\_\_  
**Steven A. Wood, Attorney**

# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager *CD*

**Date:** 3/17/14

**Subject:** Consideration and action regarding a professional services agreement with Urban Safety Assessment

Currently the City has a professional services agreement with Larry Hulsey for third party inspections. However, Mr. Hulsey has failed to complete annual inspections as outlined within our City ordinance.

Urban Safety Assessment approached staff with ideas that could help ensure the monitoring and safety of the wells within our City. Also they have some services that may help with wells outside our city.

Staff feels that Urban Safety Assessment could be a great partner in monitoring and enhancing relationships with operators in the City. Staff recommends a separation with Mr. Hulsey as outlined in our agreement and approval to sign an agreement with Urban Safety Assessment.

## Clint Davis

---

**From:** Steve Garske <steve.garske@usassessment.com>  
**Sent:** Tuesday, March 11, 2014 11:02 PM  
**To:** Clint Davis  
**Subject:** Pricing

Good Evening Clint,

To answer your questions in your earlier email today regarding pricing, we have a straight hourly rate of \$85 per hour plus usual expenses for ordinance review and consultation. Our inspection fees vary depending on the number of wells within a jurisdiction and how many times a year inspected.

Regarding property annexation, based on what we've done in the past, and the project we are currently working on, the cost to the city is approx. the initial years tax revenue generated. In other words, the first year, the city does not realize a tax gain. But from that point forward, the city is gaining all taxes generated including perspective sales tax revenue that may be generated on the property when development occurs at some point in the future.

And similarly with our tax review process. During the course of our tax roll reviews, if we find any assets that are not on the county tax rolls and should be, we charge the first year's net tax amount for those items. If we don't find anything, we don't charge anything for those services.

Feel free to share this with your city council members and if you have any other questions, don't hesitate to call.

Sincerely,

Steve Garske  
[steve.garske@USAssessment.com](mailto:steve.garske@USAssessment.com)  
817-917-0667  
[www,USAssessment.com](http://www.USAssessment.com)

**Sec. 14-302. Periodic reports.**

- (a) The operator shall notify the inspector of any changes to the following information within one business week after the change occurs:
  - (1) The name, address (physical address), and phone number of the operator.
  - (2) The name, address (physical address), and phone number of the person designated to receive notices from the city (which person must be a resident of the state that can be served in person or by registered or certified mail).
  - (3) The operator's emergency action response plan (including drive-to-maps from public rights-of-way to each drill site).
- (b) The operator shall notify the inspector of any change to the name, address, and 24-hour phone number of the person with supervisory authority over drilling or operations activities within one business day.
- (c) The operator shall provide a copy of any incident reports or written complaints submitted to the railroad commission of any notice of violation from the railroad commission within 30 days after the operator has notice of the existence of such reports or complaints.
- (d) Beginning on December 31 after each well is completed, and continuing on each December 31 thereafter until the operator notifies the inspector that the well has been abandoned and the site restored, the operator shall submit a written report to the inspector identifying any changes to the information that was included in the application for the applicable gas-well permit that have not been previously reported to the city.
- (e) The inspector shall perform an annual site inspection to ensure that the operator is conducting operations in compliance with the gas-well permit and the provisions of this article and to verify the accuracy of the information reported pursuant to this section. The operator shall pay an annual inspection fee in the amount as currently established or as hereafter adopted by resolution of the city council from time to time.

*(Code 2008, § 154.10)*

# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager *CD*

**Date:** 3/17/14

**Subject:** Report to Council regarding the Alvarado Police Department Motor Vehicle Racial Profiling Information report.

The Racial Profiling Report for 2013 has been certified by the City secretary and is now on file for review. This report is prepared pursuant to State Law in the Code of Criminal Procedure that directs such report shall be made annually and filed with the governing body of the City of Alvarado.

## TIER 1 - PARTIAL EXEMPTION RACIAL PROFILING REPORT

**Agency Name:** ALVARADO POLICE DEPT.  
**Reporting Date:** 02/28/2014  
**TCOLE Agency Number:** 251201  
**Chief Administrator:** BRAD ANDERSON  
**Agency Contact Information:** Phone: 817-790-0910  
Email: [andersonb@cityofalvarado.org](mailto:andersonb@cityofalvarado.org)  
Mailing Address:  
ALVARADO POLICE DEPT.  
Alvarado Police Department  
600 S Parkway  
Alvarado, TX 76009

**This Agency claims partial racial profiling report exemption because:**

Our vehicles that conduct motor vehicle stops are equipped with video and audio equipment and we maintain videos for 90 days.

### **Certification to This Report 2.132 (Tier 1) – Partial Exemption**

#### **Article 2.132(b) CCP Law Enforcement Policy on Racial Profiling**

ALVARADO POLICE DEPT. has adopted a detailed written policy on racial profiling. Our policy:

- (1) clearly defines acts constituting racial profiling;
- (2) strictly prohibits peace officers employed by the ALVARADO POLICE DEPT. from engaging in racial profiling;
- (3) implements a process by which an individual may file a complaint with the ALVARADO POLICE DEPT. if the individual believes that a peace officer employed by the ALVARADO POLICE DEPT. has engaged in racial profiling with respect to the individual;
- (4) provides public education relating to the agency's complaint process;
- (5) requires appropriate corrective action to be taken against a peace officer employed by the ALVARADO POLICE DEPT. who, after an investigation, is shown to have engaged in racial profiling in violation of the ALVARADO POLICE DEPT.'s policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
  - (A) the race or ethnicity of the individual detained;
  - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and

Page 1 of 3 pages submitted electronically to the  
The Texas Commission on Law Enforcement

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) The Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

**I certify these policies are in effect.**

Executed by: **BRAD ANDERSON**

Chief Administrator

ALVARADO POLICE DEPT.

Date: 02/28/2014

**ALVARADO POLICE DEPT. Motor Vehicle Racial Profiling Information**

**Number of motor vehicle stops:**

- 1. 6886 citation only
- 2. 0 arrest only
- 3. 223 both
- 4. 7109 Total (4, 11, 14 and 17 must be equal)

**Race or Ethnicity:**

- 5. 599 African
- 6. 96 Asian
- 7. 5612 Caucasian
- 8. 746 Hispanic
- 9. 47 Middle Eastern
- 10. 9 Native American
- 11. 7109 Total (lines 4, 11, 14 and 17 must be equal)

**Race or Ethnicity known prior to stop?**

- 12. 5 Yes
- 13. 7104 No
- 14. 7109 Total (lines 4, 11, 14 and 17 must be equal)

**Search conducted?**

- 15. 335 Yes
- 16. 6774 No
- 17. 7109 Total (lines 4, 11, 14 and 17 must be equal)

**Was search consented?**

- 18. 199 Yes
- 19. 136 No
- 20. 335 Total (must equal line 15)

# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager 

**Date:** 3/17/14

**Subject:** Consideration and Action concerning awarding the contract for improvements to wastewater collection lines on Spears and Cotter

Some time ago, City Engineers determined the main in Cotter must be replaced in order to allow proper flow from Spears. Council previously approved staff to advertise for bids for these improvements.

Staff recommends approval of the bid submitted by J.K. Excavation in the amount of \$117,393. J.K. has completed several projects with the City recently with satisfactory results.

Staff recommends approval of the contract.

**CE** **CHILDRESS ENGINEERS**  
**ENGINEERS & CONSULTANTS**

TEXAS REGISTERED ENGINEERING FIRM F-702

ROBERT T. CHILDRESS, JR., P.E. • BENJAMIN S. SHANKLIN, P.E. • ROBERT T. CHILDRESS III, P.E.

March 14, 2014

Mr. Clint Davis, City Manager  
City of Alvarado  
104 W. College  
Alvarado, Texas 76009

Re: Contract Award,  
S. Cummings Drive, Cotter Street and  
S. Spears Street Sanitary Sewer Improv.

Dear Mr. Davis:

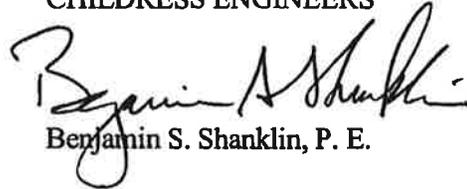
We have carefully reviewed the bids taken March 12, 2014 for construction of the above referenced project. There were eight (8) bids received with the low bidder being J&K Excavation. We have worked with J & K Excavation's and find their work to be acceptable.

We hereby recommend that the contract be awarded to J&K Excavation of Italy, Texas in the amount of \$117,393.00.

Upon notification of the City's award, we will proceed with preparation of the contract and bond documents.

Very truly yours,

CHILDRESS ENGINEERS



Benjamin S. Shanklin, P. E.

BSS/cv  
cc: J&K Excavation

CITY OF ALVARADO

S. CUMMINGS DRIVE, COTTER STREET,  
AND S SPEARS STREET SANITARY SEWER

MARCH 12, 2014

BIDDERS LIST

|                             | <u>Base Bid</u>      |
|-----------------------------|----------------------|
| 1. J & K EXCAVATION         | \$ <u>117,393.00</u> |
| 2. CANARY CONSTRUCTION      | \$ <u>157,239.00</u> |
| 3. B&R UTILITY CONSTRUCTION | \$ <u>177,297.00</u> |
| 4. M.E. BURNS CONSTRUCTION  | \$ <u>189,616.50</u> |
| 5. CIRCLE H CONTRACTORS     | \$ <u>190,554.50</u> |
| 6. B&L CONSTRUCTION COMPANY | \$ <u>249,691.00</u> |
| 7. P.C. CONTRACTORS         | \$ <u>No Bid</u>     |
| 8. RA DEVELOPMENT           | \$ <u>No Bid</u>     |

UNIT PRICE BID SUMMARY  
 CITY OF ALVARADO  
 S. CUMMINGS DRIVE, COTTER STREET, AND  
 S. SPEARS STREET SANITARY SEWER IMPROVEMENTS  
 MARCH 12, 2014

| ITEM NO.              | DESCRIPTION                                | BASE BID | QUANTITY | UNIT | J&K Excavation |                     |            | Canary Construction |            |             | B & R Utility Construction |             |            | M.E. Burns Construction |  |  |  |
|-----------------------|--------------------------------------------|----------|----------|------|----------------|---------------------|------------|---------------------|------------|-------------|----------------------------|-------------|------------|-------------------------|--|--|--|
|                       |                                            |          |          |      | PRICE          | TOTAL PRICE         | UNIT PRICE | TOTAL PRICE         | UNIT PRICE | TOTAL PRICE | UNIT PRICE                 | TOTAL PRICE | UNIT PRICE | TOTAL PRICE             |  |  |  |
| 1                     | Project Video                              |          | 1        | LS   | \$350.00       | \$350.00            |            |                     |            |             |                            |             |            |                         |  |  |  |
| 2                     | Permanent Asphalt Pavement Repair          |          | 889      | SY   | \$24.00        | \$21,336.00         |            |                     |            |             |                            |             |            |                         |  |  |  |
| 3                     | 6" PVC, SDR 35 Sewer Main (0-6' cut)       |          | 307      | LF   | \$26.00        | \$7,982.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 4                     | 6" PVC, SDR 35 Sewer Main (6-8' cut)       |          | 329      | LF   | \$27.00        | \$8,883.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 5                     | 6" PVC, SDR 35 Sewer Main (8-10' cut)      |          | 616      | LF   | \$29.00        | \$17,864.00         |            |                     |            |             |                            |             |            |                         |  |  |  |
| 6                     | Connect to Existing Services               |          | 20       | EA   | \$950.00       | \$19,000.00         |            |                     |            |             |                            |             |            |                         |  |  |  |
| 7                     | 4' Diameter Stan. Manholes (0-6' depth)    |          | 2        | EA   | \$3,000.00     | \$6,000.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 8                     | 4' Diameter Drop Manholes (6-8' depth)     |          | 2        | EA   | \$4,600.00     | \$9,200.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 9                     | 4' Diameter Drop Manholes (8-10' depth)    |          | 2        | EA   | \$5,200.00     | \$10,400.00         |            |                     |            |             |                            |             |            |                         |  |  |  |
| 10                    | Connect to Existing Sanitary Sewer Line    |          | 1        | LS   | \$1,500.00     | \$1,500.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 11                    | Relocate Existing Water Line Crossings     |          | 4        | EA   | \$2,500.00     | \$10,000.00         |            |                     |            |             |                            |             |            |                         |  |  |  |
| 12                    | Abandon & Fill Existing San. Sew. Manholes |          | 3        | EA   | \$600.00       | \$1,800.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 13                    | Driveway Repair Station                    |          | 1        | LS   | \$1,200.00     | \$1,200.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| 14                    | Trench Safety System                       |          | 1,252    | LF   | \$1.50         | \$1,878.00          |            |                     |            |             |                            |             |            |                         |  |  |  |
| <b>TOTAL BASE BID</b> |                                            |          |          |      |                | <b>\$117,393.00</b> |            |                     |            |             |                            |             |            |                         |  |  |  |

| ITEM NO.              | DESCRIPTION                                | BASE BID | QUANTITY | UNIT | Circle H Contractors LP |                     |            | B & L Construction Co. |            |             | P.C. Contractors |             |            | RA Development |  |  |  |
|-----------------------|--------------------------------------------|----------|----------|------|-------------------------|---------------------|------------|------------------------|------------|-------------|------------------|-------------|------------|----------------|--|--|--|
|                       |                                            |          |          |      | PRICE                   | TOTAL PRICE         | UNIT PRICE | TOTAL PRICE            | UNIT PRICE | TOTAL PRICE | UNIT PRICE       | TOTAL PRICE | UNIT PRICE | TOTAL PRICE    |  |  |  |
| 1                     | Project Video                              |          | 1        | LS   | \$800.00                | \$800.00            |            |                        |            |             |                  |             |            |                |  |  |  |
| 2                     | Permanent Asphalt Pavement Repair          |          | 889      | SY   | \$35.50                 | \$31,559.50         |            |                        |            |             |                  |             |            |                |  |  |  |
| 3                     | 6" PVC, SDR 35 Sewer Main (0-6' cut)       |          | 307      | LF   | \$68.00                 | \$20,876.00         |            |                        |            |             |                  |             |            |                |  |  |  |
| 4                     | 6" PVC, SDR 35 Sewer Main (6-8' cut)       |          | 329      | LF   | \$73.00                 | \$24,017.00         |            |                        |            |             |                  |             |            |                |  |  |  |
| 5                     | 6" PVC, SDR 35 Sewer Main (8-10' cut)      |          | 616      | LF   | \$82.00                 | \$50,512.00         |            |                        |            |             |                  |             |            |                |  |  |  |
| 6                     | Connect to Existing Services               |          | 20       | EA   | \$750.00                | \$15,000.00         |            |                        |            |             |                  |             |            |                |  |  |  |
| 7                     | 4' Diameter Stan. Manholes (0-6' depth)    |          | 2        | EA   | \$3,200.00              | \$6,400.00          |            |                        |            |             |                  |             |            |                |  |  |  |
| 8                     | 4' Diameter Drop Manholes (6-8' depth)     |          | 2        | EA   | \$3,500.00              | \$7,000.00          |            |                        |            |             |                  |             |            |                |  |  |  |
| 9                     | 4' Diameter Drop Manholes (8-10' depth)    |          | 2        | EA   | \$3,700.00              | \$7,400.00          |            |                        |            |             |                  |             |            |                |  |  |  |
| 10                    | Connect to Existing Sanitary Sewer Line    |          | 1        | LS   | \$400.00                | \$400.00            |            |                        |            |             |                  |             |            |                |  |  |  |
| 11                    | Relocate Existing Water Line Crossings     |          | 4        | EA   | \$3,000.00              | \$12,000.00         |            |                        |            |             |                  |             |            |                |  |  |  |
| 12                    | Abandon & Fill Existing San. Sew. Manholes |          | 3        | EA   | \$900.00                | \$2,700.00          |            |                        |            |             |                  |             |            |                |  |  |  |
| 13                    | Driveway Repair Station                    |          | 1        | LS   | \$2,500.00              | \$2,500.00          |            |                        |            |             |                  |             |            |                |  |  |  |
| 14                    | Trench Safety System                       |          | 1,252    | LF   | \$7.50                  | \$9,390.00          |            |                        |            |             |                  |             |            |                |  |  |  |
| <b>TOTAL BASE BID</b> |                                            |          |          |      |                         | <b>\$190,554.50</b> |            |                        |            |             |                  |             |            |                |  |  |  |



*Benjamin S. Shanklin*  
 Benjamin S. Shanklin, P.E.  
 Date 3-13-14

# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager 

**Date:** 3/17/14

**Subject:** Consideration and action regarding easement agreements for a water transmission line located on Tract 3 Abst. 516, H Lewis survey and property located at 7100 CR 604 .

Staff has been working with Mr. Joe Bean and Mr. Brian Heard to acquire easements for the placement of the water transmission line to purchase from Johnson County SUD. Staff is working with the City attorney to draft agreements to meet these requirements. Normal easement language covers most items but the owners have requested that the City of Alvarado will not annex them without their permission. The State allows this but places a 45 year cap on the agreement.

Payment for the easements will be 150% of the CAD property value. This includes the 20 foot permanent easement and 20 foot temporary easement for construction. At current CAD value cost should be about \$6580.35.

Staff requests approval of the payments for the easement, approval for the agreements for annexation, and ask that the Council designate the City Manager to execute documents prepared by the City Attorney.



# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager 

**Date:** 3/17/14

**Subject:** Consideration and action regarding an easement agreement for a regional lift station and sanitary sewer lines located on lot 2 block 1 Burger King Addition and tracts II, III, V, VI, VII, and VII J Dixon Survey Abstract 214..

Staff has been working with Mr. Lynn Smith to acquire easements for the placement of sewer lines and a regional lift station servicing the West side of I-35. Mr. Smith is agreeable to grant these easements in exchange for four sewer taps and waiver of participation in the cost of the improvements. Staff has worked with the City attorney to draft an agreement to meet these requirements.

Staff recommends approval.

**AGREEMENT FOR UTILITY EASEMENT**

STATE OF TEXAS           §  
                                          §  
COUNTY OF JOHNSON   §

This agreement for utility easement (“Agreement”) is entered into by and between the City of Alvarado (“City”) and Lynn Smith (“Owner”), effective on the date the last party to this Agreement signs this Agreement, for the purposes stated herein.

WHEREAS, Owner is the record owner of those certain tracts of land described on Exhibit “A” attached hereto and incorporated herein by reference (collectively the “Property”); and

WHEREAS, the City desires to obtain from Owner a certain easement for public utilities across and under the Property; and

WHEREAS, Owner is agreeable to granting the City the easement in exchange for the consideration stated in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged.

NOW, THEREFORE, for and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

I.

1.1 Upon the execution of this Agreement, Owner agrees to sign and deliver to the City the Utility Easement attached hereto as Exhibit “B” which is also attached hereto and incorporated herein by reference.

1.2 As part of the consideration for granting the easement described in this Agreement, the City agrees that in the event water or sewer infrastructure is located in the Utility Easement, the City will permit Owner or Owner’s lawful successor-in-interest to tap into said infrastructure and will waive up to a total of four tap fees for Owner or Owner’s lawful successor-in-interest and will not require Owner or Owner’s successor-in-interest to pay for the cost of the construction of any sewer utilities to be located in the Utility Easement. However, nothing in this Agreement should be construed as a promise by the City to construct utilities of any kind in the Utility Easement.

II.

2.1 Entire Agreement. This Agreement and any exhibits or attachments hereto contain the entire agreement between the parties regarding the subject matter hereof and displaces any prior or contemporary written or oral agreements.

OWNER:

\_\_\_\_\_  
Lynn Smith

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                          §  
COUNTY OF JOHNSON   §

Before me on this day personally appeared Lynn Smith known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit "B"**

**Utility Easement attached hereto**



# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager 

**Date:** 3/17/14

**Subject:** Consideration and action concerning SR20 project

SR2O (Scrap Rubber To Oil) has previously presented material about the possible location of a facility in Alvarado. Recently they informed staff that they were considering other locations. Though they have taken no formal action to sever ties with Alvarado, staff has answered several calls from Somerville County officials concerning the group. Because of this Mayor has requested a discussion about the project.

# CITY OF ALVARADO

## MEMORANDUM

**To:** Honorable Mayor and City Council

**From:** Clint Davis, City Manager 

**Date:** 3/17/14

**Subject:** Consideration and Action concerning a contract for services from Childress Engineers for the CDBG Grant funded improvements in Alvarado Hills

The City applied to the CDBG program for funds to improve sewer lines in the Alvarado Hills development. The aging lines in the community had started to deteriorate and cause regular maintenance problems. The City received the grant funds and has proceeded with the project. As our City engineer Childress Engineers has prepared plans for the grant and worked with our administrator on the project. The City issued an RFQ for the project with Childress providing the only response. Staff recommends approval of the contract to formally designate them as the project engineer.

## CONTRACT (PARTS I-V)

### PROFESSIONAL MANAGEMENT, ENGINEERING AND/OR ARCHITECTURAL SERVICES

#### PART I - AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF ALVARADO, hereinafter called the "City", acting herein by Mayor Dewanye Richters hereunto duly authorized, and Childress Engineers hereinafter called "Firm", acting herein by Benjamin S. Shanklin.

WITNESSETH THAT:

WHEREAS, the City of Alvarado desires to implement a Community Development Block Grant under the general direction of the Texas Community Development Program (TxCDBG); and Whereas the CITY desires to engage Childress Engineers to render certain services in connection with its utility project consisting of the Construction and testing of a wastewater collector line, manholes and other appurtenances. This work is to be known as the ALVARADO HILLS SANITARY SEWER IMPROVEMENTS and hereinafter referred to as the "Project".

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services

Part II, Scope of Services, is hereby incorporated by reference into this Agreement.

2. Time of Performance - The services of Childress Engineers shall commence on March 18, 2014. In any event, all of the services required and performed hereunder shall be completed no later than November 11, 2015.

3. Access to Information - It is agreed that all information, data, reports, records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to Childress Engineers by the City and its agencies. No charge will be made to Childress Engineers for such information and the City and its agencies will cooperate with Childress Engineers in every way possible to facilitate the performance of the work described in the contract.

4. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$42,475.00 (Forty Two Thousand Four Hundred Seventy-Five Dollars) without further authorization. Payment to Childress Engineers shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Contract.

5. Indemnification - Childress Engineers shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against them, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

6. Miscellaneous Provisions

a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Johnson County, Texas.

b. This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

c. In any case 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 provision thereof and this Agreement shall not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

e. This Agreement may be amended by mutual agreement of the parties hereto and in writing to be attached and incorporated into this Agreement.

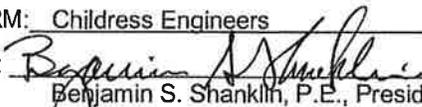
7. Terms and Conditions - This Agreement is subject to the provisions titled, "Part IV Terms and Conditions" and attached hereto and incorporated by reference herein.
8. Standard Conditions - This Agreement is subject to the provisions titled, "Part V Standard Conditions" and attached hereto and incorporated by reference herein.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

CITY OF ALVARADO

FIRM: Childress Engineers

BY: \_\_\_\_\_  
Dewayne Richters, Mayor

BY:   
Benjamin S. Shanklin, P.E., President

**NOTE:** This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification.

## PART II

### PROFESSIONAL ENGINEERING/ARCHITECTURAL SCOPE OF SERVICES

The Engineering Firm shall render the following professional services necessary for the development of the project:

#### SCOPE OF SERVICES

##### Basic Services

The ENGINEER will promptly and expeditiously provide the supervision, direction, and personnel and equipment to perform the following work during the design phase:

1. Attend preliminary conferences with the CITY regarding the requirements of the project.
2. To design the project to conform to the intent of the CITY to construct the aforementioned PROJECT.
3. Provide project management and coordination for the project.
4. To meet the specific time table, as follows:  
Complete the preliminary design for the project, and submit to CITY for approval:  
    Within ninety (90) calendar days following written notification by CITY to proceed with the preliminary design of the project.

Complete final plans, specifications and bid documents:

    Within sixty (60) days following CITY approval to proceed with the final design of the project

5. Determine necessity for any acquisition of any additional real property/easements/ROWS for the TxCDBG project and, if applicable, furnish to the CITY:
  - Name and address of property owners;
  - Map showing entire tract with designation of part to be acquired.
6. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance, as required.
7. Prepare bid packet/contract documents/advertisement for bids.
8. Make 10-day call to confirm prevailing wage decision issued by TxCDBG.
9. Incorporate any and all wage rate modifications or supersede as via bid addendum (if applicable).
10. Conduct bid opening and prepare minutes.
11. Tabulate, analyze, and review bids for completeness and accuracy.
12. Accomplish construction Contractor eligibility verification.
13. Conduct pre-construction conference and prepare copy of report/minutes.
14. Issue Start of Construction Notice to TxCDBG and Notice to Proceed to construction contractor.
15. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.

16. Design for access by persons with disabilities to facilities to be used by the public in accordance with Public Law 504.
17. Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond that have TxCDBG approval.
18. Make periodic visits to the site to observe the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract.
19. Consult with and advise the CITY during construction; issue to contractors all instructions requested by the CITY; and prepare routine change orders if required, at no charge for engineering services to the CITY when the change order is required to correct errors or omissions by the Engineer; provide price analysis for change orders; process and submit change orders to TxCDBG for approval prior to execution by CITY.
20. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
21. Based on the Engineer's on-site observations and review of the contractor's applications for payment, determine the amount owing to the contractor in such amounts; such approvals of payment to constitute a representation to the CITY, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
22. Require that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the CITY and approval by TxCDBG, unless State or local law provides otherwise.
23. Prepare Certificate of Construction Completion and Clean Lien Certificate.
24. Conduct interim/final inspections.
25. Revise contract drawings to show the work as actually constructed, and furnish the CITY with a set of "as built" plans. TxCDBG requires that the Project Engineer shall furnish a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the CITY.

## **Special Services**

### **Surveying Services**

#### 1. Topographic Survey

- The available aerial photos will be utilized; however, additional field surveying will be required to supplement the design.
- Set GPS Control Points.
- Field tie visible points required for final design along the proposed route.
- Locate existing utility lines (per utility locator).
- Field tie above ground visible improvements.
- Prepare a topographic survey drawing.
- This drawing will show ground surface contours at an interval of one (1) foot supplemented by appropriate spot elevations accurate to 0.1 foot elevation in areas where new facilities are proposed.

### **Additional Engineering Services**

In addition to performing the engineering services described above, the ENGINEER agrees to perform additional services as requested by CITY from time to time and CITY agrees to compensate ENGINEER for such services in accordance with ENGINEER's standard hourly fee (see Attachment I) as determined by the actual costs incurred and by actual time expended, or based on the actual sub-contractor's invoices for work done, times a 1.2 multiplier, such services to be one or more of the following:

1. Make or prepare property surveys, detailed description of sites, maps, or drawings related thereto and outside the scope of the Project.
2. Acquisition of real property or easements is not anticipated for this project.
3. Services supporting the condemnation process.
4. Engineering services required due to relocation of the project route.
5. Provide a Resident Project Representative
6. Appearances before courts or boards on matters of litigation or hearings related to the Project.
7. Miscellaneous engineering work for CITY not related to the Project.

### **SUBCONTRACTS**

1. If any time during progress of the work, the CITY determines that any subcontractor is incompetent or undesirable, the CITY will notify the Engineer who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Contract shall create any contractual relation between any subcontractor and CITY.
2. The Engineer will include in all contracts and subcontracts of amounts in excess of \$100,000 a provision which requires compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act [42 U.S. 1857 (h)], Section 508 of the Clean Water Act (33 U.S.C. 1368d), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which

prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to TxCDBG and to the U.S. Environmental Protection Agency Assistant Administrator for Enforcement.

3. The Engineer will include in all contracts and subcontracts other than for small purchases (less than \$10,000), provisions or conditions which will allow for administrative, contractual or legal remedies in instances which violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
4. The Engineer will include in all contracts and subcontracts in excess of \$10,000 suitable provisions for termination by the CITY including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Engineer.
5. The Engineer will include in all contracts and subcontracts in excess of \$10,000 provisions requiring compliance with the following:
  - The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, physical or mental disability, marital status, parenthood, or age.
  - Executive Order 11246 - Equal Employment Opportunity.
  - Copeland Anti-Kickback Act.
  - (in excess of \$2,000) - Davis-Bacon Act
  - (in excess of \$2,000) - Section 103 and 107 of the Contract Work Hours and Safety Standards Act.
  - a provision recognizing mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
  - Section 3 of the Housing and Urban Development Act of 1969.
  - Title VI of the Civil Rights Act of 1964
6. The Engineer will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
7. The Engineer will include in all negotiated contracts and subcontracts a provision to the effect that the CITY, TxCDBG, the Comptroller General of the State of Texas, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
8. The Engineer will include in all contracts and subcontracts a requirement that the Contractor maintain all relevant project records for three (3) years after the CITY has made final payment to the Contractor and all other pending matters are closed.

## STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Engineer and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Engineer represents that it has the required skills and capacity to perform work and services to be provided under this Contract.
2. The Engineer represents that services provided under this Contract shall be performed within the limits prescribed by the CITY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Engineer's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from CITY and at the Engineer's expense if the deficiency is due to Engineer's negligence. The CITY shall notify the Engineer in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the CITY under applicable state or federal law.
4. The Engineer agrees to and shall hold harmless the CITY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Engineer, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Engineer doing the work herein contracted for or by or in consequence of any negligence in the performance of this Contract, or by or on account of any omission in the performance of this Contract.

**NOTE:** This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification.

**PART III**

**PAYMENT SCHEDULE**

**PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES**

CITY shall reimburse Childress Engineers for basic engineering services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

| <b>Milestone</b>                                                                | <b>% of Contract Fee</b> |
|---------------------------------------------------------------------------------|--------------------------|
| • Approval of Preliminary Engineering Plans and Specifications by CITY.         | 30%                      |
| • Approval of Plans and Specifications by Regulatory Agency(ies).               | 20%                      |
| • Start of Construction.                                                        | 40%                      |
| • Completion of Final Closeout Assessment and submittal of "As Builts" to CITY. | 5%                       |
| • Completion of final inspection and acceptance by the CITY.                    | 5%                       |
| <b>Total</b>                                                                    | <b>100%</b>              |

**NOTE:** Percentages of payment listed here are general guidelines based on engineering services typically provided. These are negotiable, and should serve only as a guide. Payment schedule should be tied directly to the actual Scope of Work identified in Part II - Engineering/Architectural Scope of Services.

## SPECIAL SERVICES

Special Services shall be reimbursed under the following hourly rate schedule:  
(List all applicable services to include overhead charge).

|                         |          |
|-------------------------|----------|
| Registered Surveyor     | \$160.00 |
| Survey Crew (3 members) | \$170.00 |
| Project Engineer        | \$200.00 |
| Engineering Technician  | \$135.00 |
| Project Representative  | \$90.00  |
| Draftsman               | \$90.00  |

The fee for all other Special Services shall not exceed a total of Ten Thousand Five Hundred and No/100 Dollars (\$10,500.00). The payment for these Special Services shall be paid, per the following schedule:

1. The Engineer shall be paid upon completion of surveying, necessary field data, and acquisition data, if applicable, the sum of Ten Thousand Five Hundred and No/100 Dollars (\$10,500.00).
2. The payment requests shall be prepared by the Engineer and be accompanied by such supporting data to substantiate the amounts requested.
3. Any work performed by the Engineer prior to the execution of this contract is at the Engineer's sole risk and expense.

## ADDITIONAL ENGINEERING SERVICES

1. Additional compensation shall be paid to the ENGINEER for services that are considered Additional Engineering Services outside of the scope described in Article I, and shall be billed according to Attachment I, by a separate Agreement or based on the actual subcontractor's invoices for work done, times a 1.2 multiplier. Billings shall be submitted monthly for these services.
2. Reimbursable expenditures (printing, deliveries, CADD plots, travel, etc...) will be invoiced according to established prices or at 1.15 times the direct cost incurred.

## PART IV

### TERMS AND CONDITIONS

#### PROFESSIONAL MANAGEMENT, ENGINEERING AND/OR ARCHITECTURAL SERVICES

1. Termination of Contract for Cause. If, through any cause, the Firm shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the Firm shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the Firm of such termination and specifying the effective date thereof, at least seven days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm under this Contract shall, at the option of the CITY, become its property and the Firm shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Firm shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Contract by the Firm, and the CITY may withhold any payments to the Firm for the purpose of set-off until such time as the exact amount of damages due the CITY from the Firm is determined.

2. Termination for Convenience of the CITY. The CITY may terminate this Contract at any time by giving at least ten (10) days notice in writing to the Firm. If the Contract is terminated by the CITY as provided herein, the Firm will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Firm, Paragraph 1 hereof relative to termination shall apply.
3. Changes. The CITY may, from time to time, request changes in the scope of the services of the Firm to be performed hereunder. Such changes, including any increase or decrease in the amount of the Firm's compensation, which are mutually agreed upon by and between the CITY and the Firm, shall be incorporated in written amendments to this Contract.
4. Personnel.
  - a. The Firm represents that he/she has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.
  - b. All of the services required hereunder will be performed by the Firm or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
  - c. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. Assignability. The Firm shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CITY thereto: Provided, however, that claims for money by the Firm from the CITY under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.
6. Reports and Information. The Firm, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Records and Audits. The Firm shall insure that the CITY maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to OMB Circular A-87, Section 570.490 of the Regulations, and this Contract. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Contract. CITY shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Contract or the period required by other applicable laws and regulations.
8. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.
9. Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Firm.
10. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
11. Equal Employment Opportunity. During the performance of this Contract, the Firm agrees as follows:
  - a. The Firm will not discriminate against any employee or applicant for employment because of race, creed, sex, color, handicap or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, handicap or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this non-discrimination clause.
  - b. The Firm will, in all solicitation or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, handicap or national origin.
  - c. The Firm will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
  - d. The Firm will include the provisions a. through c. in every subcontract or purchase order unless exempted.
12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
13. Section 109 of the Housing and Community Development Act of 1974.
  - a. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
14. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.
  - a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Office of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as

amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in, or owned in substantial part by persons residing in the area of the project.

- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. 235, and all applicable rules and orders of the Office issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Office issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 C.F.R. Part 135.

15. Section 503 Handicapped (if \$2,500 or Over) Affirmative Action for Handicapped Workers.

- a. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- c. In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

- e. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
  - f. The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.
16. Interest of Members of the CITY. No member of the governing body of the CITY and no other officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract. and the Firm shall take appropriate steps to assure compliance.
17. Interest of Other Local Public Officials. No member of the governing body of the CITY and no other public official of such CITY, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Firm shall take appropriate steps to assure compliance.
18. Interest of Firm and Employees. The Firm covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Firm further covenants that in the performance of this Contract, no person having any such interest shall be employed.

## PART V

### STANDARD PROVISIONS

1. The attached standard provisions, is hereby incorporated by reference into this agreement.

**CHILDRESS ENGINEERS, INC.**  
**STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$25.00 per hour.

(2) **Client's Responsibilities** In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land use regulations, etc., upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require or the Consultant may reasonably request in furtherance of the project development.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope and timing of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services** Unless otherwise stated herein, the Consultant will begin work timely after receipt of an executed copy of this Agreement and will complete the services in a reasonable time. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted by the Consultant to the Client periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. The Client shall also pay to the Consultant all transaction taxes, if any, whether state, local, or federal, levied with respect to amounts paid hereunder, including but not limited to sales tax. The Consultant shall be compensated in U.S. dollars. Interest will be added to accounts not paid within 30 days at the rate of 12% per annum beginning on the 30 day. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services under this Agreement until all amounts due are paid in full.
- (b) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing.
- (c) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents**

- (a) All Documents are instruments of service. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of Consultant whether or not a Specific Project is completed).
- (b) Copies of Client-furnished data that may be relied upon by Consultant are limited to the printed copies (also known as hard copies) that are delivered to Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Client to Consultant are only for convenience of Consultant. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

(c) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

(d) Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by Client.

(e) When transferring documents in electronic media format, Consultant makes no representations as to compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of a Specific Project.

(f) Client may make and retain copies of Documents for information and reference in connection with use on a Specific Project by Client. Such Documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Specific Project for which they were prepared or on any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's subconsultants. Client shall indemnify and hold harmless Consultant and Consultant's subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

(g) If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

(h) Any verification or adaptation of the Documents for extensions of the Specific Project for which they were prepared or for any other project will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

(6) **Opinions of Cost** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. Consultant assumes no responsibility for the accuracy of opinions of Total Project Costs. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance** The Consultant is protected by Workers' Compensation insurance, professional liability insurance and general liability insurance and will exchange certificates of insurance upon request. If the Client directs the Consultant to obtain increased insurance coverage, or if the nature of the Consultant's activities requires additional insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **Limitation of Liability** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and sub consultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed the total compensation received by the Consultant under this Agreement or \$25,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for lost profits or consequential damages, for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Exclusion of Special, Incidental, Indirect and Consequential Damages** To the fullest extent permitted by law, and not withstanding any other provision in the Agreement, Consultant and Consultant's officers, directors, partners, employees, agents, and Consultant's subconsultants shall not be liable to Client or anyone claiming by, through, or under Client for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant or Consultant's officers, directors, partners, employees, agents, or Consultant's subconsultants, or any of them.

(12) **Parameters of Performance**

(a) Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Client shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in Client-furnished information.

(b) Consultant and Client shall comply with applicable Laws or Regulations and Client-mandated standards. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to Client's responsibilities or to Consultant's scope of services, times of performance, or compensation.

(c) Client shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Client to Consultant pursuant to this Agreement. Consultant may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

(13) **Certifications**

(a) The Consultant shall not be required to execute any certifications or other documents that might, in the judgment of the Consultant, increase the Consultant's risk or affect the availability, applicability, or cost of its insurance.

(b) Prior to the commencement of the Construction Phase on a Specific Project, Client shall notify Consultant of any notice or certification that Consultant will be requested to provide to Client or third parties in connection with a Specific Project. Client and Consultant shall reach agreement on the terms of any such requested notice or certification, and Client shall authorize such Additional Services as are necessary to enable Consultant to provide the notices or certifications requested.

(c) Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain within its services for that Specific Project. Client agrees not to make resolution of any dispute with Consultant or payment of any amount due to the Consultant in any way contingent upon Consultant signing any such certification.

(14) **Dispute Resolution** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(15) **Hazardous Substances and Conditions**

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with its services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(c) Except to the extent of negligence, if any, on the part of the Consultant in performing services expressly undertaken in connection with hazardous substances and conditions, the Client agrees to hold harmless, indemnify, and defend the Consultant from and against any and all claims, losses, damages, liability, and costs in any way arising out or connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental liability of any nature, in any manner related to services of the Consultant.

(16) **Construction Phase Services**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto. Consultant shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of a Contractor's agents or employees or any other persons (except Consultant's own employees) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Client without consultation and advice of Consultant.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

**(17) Assignment and Subcontracting** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

**(18) Confidentiality** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

**(19) Miscellaneous Provisions** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**(20) Ownership Of Documents** - Client acknowledges that all original papers, documents, maps, surveys, digital data and other work product and copies thereof, produced by Childress Engineers, Inc. pursuant to this Agreement shall remain the property of Childress Engineers, Inc., except documents which are to be filed with public agencies. Client further acknowledges that Client's right to utilize the services and work product performed pursuant to this agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this Agreement and Client has performed all obligations under this Agreement.

**(21) Copyright** -The parties agree that all protections of the United States and Texas copyright laws shall be applicable to the work product to the benefit of Childress Engineers, Inc., including common law and statutory law, whether or not any copyright for such work product actually is registered, and without regard to whether or not such copyright actually applies to such work product.