

**Agreement between Owner and Engineer  
for Professional Design Services**

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between Tank Industry Consultants, headquartered at 7740 West New York Street, Indianapolis, Indiana 46214, hereafter referred to as the ENGINEER and City of Cuero, located at 514 Sara Street Cuero, Texas 77954, hereafter referred to as the OWNER.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

**SECTION 1 - SERVICES OF ENGINEER**

1.1. The ENGINEER agrees to provide professional design services and bidding services for the Project in accordance with the ENGINEER's proposal to the OWNER dated June 16, 2022, attached hereto as Exhibit A.

**SECTION 2 - OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so not to delay the services of ENGINEER.

- 2.1. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.
- 2.2. Provide all criteria and full information as to ENGINEER's services hereunder as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER currently has, if any.
- 2.3. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 2.4. Review all of ENGINEER's submittals and provide comments and input to allow ENGINEER's work to meet OWNER's objectives.
- 2.5. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in the work of any Contractor affecting the Project.
- 2.6. Perform the duties required under the Terms section (if any) of the Proposal.
- 2.7. The information and services to be provided by OWNER under the Section will be without cost to ENGINEER.

**SECTION 3-PAYMENTS TO ENGINEER**

OWNER shall pay ENGINEER for Services rendered in the amounts outlined in the Proposal to the OWNER dated June 16, 2022. The OWNER shall issue payment to ENGINEER within 30 calendar days of receipt of properly submitted invoice, attached hereto as Exhibit A

**SECTION 4-TERMS AND CONDITIONS**

- 4.1. **Professional Responsibility** - ENGINEER represents that the services shall be performed, within the limits presented by OWNER, in a manner consistent with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the time the services are performed. No other representations to OWNER, expressed or implied and no warranty or guarantee is included in this Agreement, or in any report, opinion, document, or otherwise.
- 4.2. **Re-Use of Documents** - All documents furnished by the ENGINEER pursuant to this Agreement are instruments of services in respect to the Project and the ENGINEER shall retain ownership of said documents whether or not the Project is completed. The OWNER may make and retain any additional copies for information and reference in connection with the use of the Project by the OWNER and others for the Project; however, such documents are not

intended to be suitable for re-use by the OWNER or others on extensions of the Project or on any other project. Any re-use without the express written consent of the ENGINEER will be at re-user's sole risk and without liability or legal exposure to the ENGINEER, and the OWNER shall indemnify and hold harmless the ENGINEER to the extent permitted by law from all claims, damages, losses, expenses, and costs, including attorneys' fees arising out of or resulting from the reuse of said documents without the ENGINEER's consent. The granting of such consent will entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

**4.3. Insurance. ENGINEER shall maintain the sufficient liability insurance coverages. ENGINEER shall procure and maintain worker's compensation, automobile, general liability and professional liability insurance. Upon receipt of the executed Agreement, ENGINEER shall provide OWNER with certificate of insurance for OWNER'S review and use. A copy of the insurance policy providing such coverage and all renewals thereof, shall be delivered to and held by City of Cuero naming the City of Cuero as additional insured, waiving any and all subrogation rights against the City of Cuero. IF ENGINEER OR ANY OF ITS EMPLOYEES, AGENTS, SUCCESSORS, CONTRACTORS, SUBCONTRACTORS OR ASSIGNS ARE INJURED IN THE COURSE OF PERFORMING THE SERVICES, THE CITY OF CUERO IS EXEMPT AND HEREBY RELEASED FROM ALL LIABILITY FOR PERSONAL INJURIES OR PROPERTY DAMAGE TO THE FULLEST EXTENT ALLOWED BY LAW. ENGINEER AND OWNER shall require all contractors working on this project to list ENGINEER and OWNER as an additional insured on their insurance certificate.**

**4.4. Termination** - The obligation to perform under the terms of this Agreement may be terminated by ENGINEER upon thirty (30) days' written notice to OWNER in the event of substantial failure of OWNER to perform in accordance with the terms hereof. This Agreement may be terminated by OWNER with or without cause upon thirty (30) days' written notice to ENGINEER. OWNER shall compensate ENGINEER for all work performed up to and including the termination date.

**4.5. INDEMNIFICATION. ENGINEER AND ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY, DEFEND AT ITS SOLE COST AND EXPENSE, PROTECT, RELEASE AND HOLD OWNER(CITY OF CUERO) AND ITS ELECTED OFFICIALS, AGENTS, EMPLOYEES, INVITEES, LEGAL REPRESENTATIVES, MANAGERS, OFFICERS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, LOSSES, SUITS, DEMANDS, AWARDS, PENALTIES, FEES, CAUSES OF ACTION, SETTLEMENTS, FINES, COSTS, EXPENSES, CHARGES, LIENS, PUNATIVE DAMAGES, ATTORNEYS FEES, JUDGMENTS OF EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, FORSEEABLE OR UNFORSEEABLE(COLLECTIVELY, "CLAIMS"), ARISING IN WHOLE OR IN PART OUT OF THE NEGLENT ACTS OR OMISSIONS OR IN CONNECTION WITH THIS AGREEMENT OR ANY WORK PERFORMED BY THE ENGINEER OR ITS AGENTS, EMPLOYEES, CONTRACTORS, , LICENSEES OR ANY OTHER PERSON OR ENTITY IN CONNECTION WITH THIS AGREEMENT OR SERVICES PERFORMED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY CLAIMS BASED ON OR ARISING FROM ANY TORT, PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE ARISING FROM ANY ACT OR OMISSION OF ENGINEER OR ITS ASSIGNS, SUCCESSORS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES, OR ANY OTHER PERSON OR ENTITY. TERMINATION OF THIS AGREEMENT SHALL NOT TERMINATE THE INDEMNITY OBLIGATION ESTABLISHED IN THIS AGREEMENT FOR SERVICES OR ACTIVITIES OF THE ENGINEER PERFORMED PRIOR TO TERMINATION.**

4.6. **SOVEREIGN IMMUNITY.** By the execution hereof, nothing contained herein shall ever be construed as a waiver of sovereign or governmental immunity by the CITY OF CUERO with respect to any matter covered by this Agreement and the rights to which are specifically reserved thereto to the fullest extent authorized by law, and minimally to the extent then and there existing prior to the execution hereof. The City of Cuero specifically reserves any and all defenses as provided by Texas law.

4.7. **VENUE.** Mandatory venue for the enforcement, application, dispute and/or interpretation of any matter concerning this Agreement and invoice shall lie in the Courts in DeWitt County, Texas. In any proceeding brought pursuant to this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly elected officials, this AGREEMENT in duplicate on the respective dates indicated below.

ENGINEER: Tank Industry Consultants

OWNER:

\_\_\_\_\_  
By: Gregory R. Stein, P.E., Managing Principal

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_

Printed: \_\_\_\_\_

Dated: \_\_\_\_\_