

RESOLUTION 2007 61 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY AND ALAN PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES IN CONNECTION WITH THE TXI RECLAIMED WATER LINE PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THIS AGREEMENT ON BEHALF OF THE CITY AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached agreement between the City and Alan Plummer Associates, Inc. for engineering services in connection with the TXI Reclaimed Water Line Project is approved.


PART 2. The City Manager, Dan O'Leary, is authorized to execute the Agreement on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED this the 3rd day of April 2007.

  
Susan Narvaiz  
Mayor

Attest:

  
Shelley Goodwin  
Interim City Clerk

## **PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

This Agreement is made this the 4th day of April, 2007, between the City of San Marcos, Texas ("City"), 630 East Hopkins, San Marcos, Texas 78666 and Alan Plummer Associates, Inc. 6300 La Calma, Ste. 400, Austin, Texas 78752 ("Engineer") for the provision of professional engineering services in connection with the TXI Reclaimed Water Line Project (the "Project").

The City and the Engineer agree as follows:

### **ARTICLE 1 ENGINEER'S SERVICES AND RESPONSIBILITIES**

#### **1.1 STANDARDS OF PERFORMANCE**

1.1.1 Engineer will be responsible for the proper, accurate and adequate design and preparation of plans and specifications and other construction contract documents and for construction administration for the Project. The Project generally includes the construction of a 12-inch (in.) diameter reclaimed water pipeline. The proposed pipeline will connect to an existing 18-in. reclaimed waterline serving the Hays Energy Power Plant. The new reclaimed waterline will extend service to the TXI plant southwest of San Marcos. The total length of proposed pipeline is approximately 13,500 linear feet. At the delivery point, a reclaimed water meter and control valve will be installed. In addition, a fourth reclaimed water pump will be added at the wastewater treatment plant to provide additional head capacity. TXI will be responsible for the design and construction of facilities on its property. It is anticipated that these improvements will include approximately 4,000 linear feet of pipeline, a ground storage tank, a booster pump station, and telemetry to send a tank level signal to the control valve and the City's SCADA system. The Engineer proposes to provide the City of San Marcos with design and construction phase services in three separate phases.

1.1.2 The Consultant's Basic Services consist of the services described in Sections 1.2 through 1.4 and include normal civil engineering services as well as those engineering services to be performed through the following consulting disciplines as subcontractors to the Consultant:

- (1) Geotechnical Engineering - Professional Service Industries, Inc.
- (2) Surveying – Macias & Associates, Inc.

1.1.3 The performance of all services by the Engineer in connection with this Agreement will be by persons appropriately licensed or registered under State, local and Federal laws governing their respective consulting disciplines. In performing all services under this Agreement, the Engineer will use that degree of care and skill ordinarily exercised for similar projects by professional Consultants who possess special expertise in the types of services involved under this Agreement.

1.1.4 No work under this Agreement will be subcontracted by the Engineer without prior written approval from the City. Any work or services subcontracted under this Agreement shall be specified by separate written Agreement and shall be subject to each provision of this Agreement.

1.1.5 Any provisions in this Agreement pertaining to the City's review, approval and/or acceptance of written materials prepared by the Engineer and/or its subconsultants, contractors, and subcontractors in connection with this Agreement will not diminish the Consultant's responsibility for the materials.

1.1.6 Engineer will perform all of its services in coordination with the City. The Engineer will advise the City of data and information the Engineer needs to perform its services, and the Engineer will meet with City representatives at mutually convenient times to assemble this data and information.

## **1.2 PHASE 1 – PRELIMINARY ENGINEERING**

The Engineer will:

1.2.1 Assemble a Project team comprised of the City's representatives and the Consultant's representatives. The Engineer will meet with the Project team to set the design and production schedule and parameters for all subsequent work, to verify the components within which all Project participants must perform, and to identify all parties and significant deadlines involved in the comprehensive schedule strategy. Based on this information, the Engineer will prepare a detailed schedule of its work for the Project addressing each component of the work to be done, indicating the points of involvement of all project participants. The Engineer will conduct weekly progress meetings between the Project team and the Contractor once the construction contract is executed.

1.2.2 Assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

1.2.3 Meet with City staff and representatives from TXI to define system operations expectations. This will include demand characteristics, peak demands, diurnal fluctuations, and pressure requirements of the receiving system/tank. The Engineer will also coordinate system controls and operations requirements, including flow metering, control valve operation, tank level reporting, etc. It is anticipated that two meetings will be required.

1.2.4 Based on the results generated in Subsection 1.2.3, the Engineer will re-evaluate the proposed system to size the pipeline appropriately for the operational expectations. The Engineer will also evaluate the need for system pumping modifications based on pressure requirements at design flows.

1.2.5 Evaluate alternative alignments for the proposed pipeline considering overall length, potential conflicts, ease of construction, and easement requirements.

1.2.6 Prepare a Technical Memorandum that includes the results of Subsections 1.2.2, 1.2.3, and 1.2.4 as well as updated opinion of probable cost.

1.2.7 Engineer will prepare and submit a Reclaimed Water Use Notification to the Texas Commission on Environmental Quality ("TCEQ") which will be consistent with the requirements of 30 TAC Chapter 210.

### **1.3 PHASE 2 – DESIGN SERVICES**

The Engineer will:

1.3.1 Meet with the City's Project Manager periodically or as needed to update the City on the progress of work.

1.3.2 Head the Project team and coordinate the integration of design, surveying, right of way issues, traffic control, utility Engineering, permitting, and other services as previously approved.

1.3.3 Assist the City in the preparation of construction contract documents using City forms based on the approved design development documents and any further adjustments authorized by the City in the scope, quality or budget of the Project. These contract documents will include detailed plans and technical specifications required for the Project to be accurately bid and efficiently constructed.

1.3.4 Use its best professional judgment to create technical documents that comply with applicable construction and development codes, local regulations and ordinances and other federal and state regulations which are known or which should reasonably be known to the Engineer.

1.3.5 Ensure that no reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Engineer.

1.3.6 Obtain approval from the City Inspector(s) of all technical plans and specifications necessary for successful completion of the Project prior to allowing the construction contract to be let for bid.

1.3.7 Obtain a field topographic survey necessary to complete the design of the proposed improvements. The Engineer will base this survey on the Texas State Grid Coordinate System and will have horizontal accuracy of 0.05 feet and vertical accuracy of 0.10 feet. The design survey shall cover the proposed alignment with a width of 50 feet (25-feet on either side of the centerline). As part of this survey, the Engineer will tie all visible topographic features, including but not limited to existing property and easement corners, mail boxes, meter boxes,

valve stems, utilities and appurtenances, roadways, back of curbs, lip of gutters, sidewalks, driveways, landscape features, structures, railroads, and trees 6-inches in diameter and greater.

1.3.8 Engineer will have easement descriptions prepared for up to five parcels. Easement documents will be prepared in a form acceptable to the City.

1.3.9 Obtain and review the results of a geotechnical investigation of the subsurface conditions at the site of the proposed improvements. This subsurface investigation will include ten subsurface borings carried to a total depth of 10-feet and four borings to a total depth of 20-feet.

1.3.10 Complete the design calculations necessary to prepare detailed construction drawings which are anticipated to include design calculations, alignment stationing, vertical grades, bedding requirements, and pipe material requirements.

1.3.11 Complete detailed construction drawings for the proposed improvements. The Engineer will prepare drawings which are 22"x34" with a horizontal scale of 1" = 50' and a vertical scale of 1" = 5'. These construction drawings will include plan views, profiles, sections and details necessary to clearly define the intent of the improvements. The Engineer will prepare drawings which define the limits of construction, required construction sequencing, environmental protection requirements, and identified contractor staging areas. The Engineer will provide five (5) copies of preliminary construction drawings (95 percent) for review. Following the City's review, the Engineer will make appropriate revisions and submit one (1) revised final copy of the construction drawings.

1.3.12 Prepare detailed construction specifications, the construction checklist, and bid form to be used for bidding the project and executing the work. The Engineer will prepare documents in accordance with the current City of San Marcos Technical Specifications and will submit two (2) copies of the draft documents to the City for review. Following the City's review, the Engineer will complete the appropriate revisions and submit one (1) revised final copy of the technical specification document.

1.3.13 Develop an opinion of probable construction cost for the authorized project at the 100 percent complete stage for City review and approval.

1.3.14 Assist the City in the submittal of plans for review by TCEQ. It is anticipated that approval from the TCEQ will involve administrative review only. In addition, the Engineer will submit the plans to the Texas Department of Transportation ("TxDOT") for approval of the use of state right-of-way. Finally, the plans will be submitted to the railroad to obtain a permit to cross the railroad right-of-way.

1.3.15 Review the design of the on-site improvements developed by TXI for consistency with the overall system improvements and to coordinate the delivery point.

1.3.16 Assist the City in the distribution of the bid documents to prospective bidders and to plan

rooms and the issuance of addenda (if any) following City's prior approval.

1.3.17 Assist the City in obtaining bids, tabulating bids, preparing bid tabulation forms, and in awarding the contract for construction following the City's approval of the construction contract documents and of the latest detailed final cost estimate of the Project.

1.3.18 Assist the City in reviewing the Statement of Bidder's Qualifications, financial statements of bidders, lists of bidders' proposed subcontractors, and all other documents required to be submitted with the bids.

1.3.19 Make a written recommendation to the City regarding award of bid; and assist the City in conducting a pre-bid conference and answer all questions of prospective or potential bidders and City's staff and make all necessary clarifications and interpretations of the construction contract documents.

1.3.20 Have no authority to issue a Notice to Proceed to any Contractor.

#### **1.4 PHASE 3 – CONSTRUCTION PHASE SERVICES**

The Construction phase of this Project will commence with the award of the construction contract and will terminate when the Project is accepted by the City. The Engineer will:

1.4.1 Provide administration of the construction contract as set forth in the construction documents unless otherwise provided in this Agreement and incorporated in the construction contract documents. Engineer will not pursue a course of conduct which might jeopardize any of the City's rights hereunder. Minor deviations from the construction contract documents that do not affect the validity of performance bond(s) are permitted.

1.4.2 Be a representative but not an agent of the City during the construction phase, and advise and consult with the City and provide progress reports and advice to the City in writing; forward the City's instructions to the Contractor unless (1) Engineer is unavailable by telephonic communication or otherwise to issue instructions necessary for the proper progress and acceptance of work; (2) jeopardy to life and/or property exists; and/or (3) lack of instructions and/or unavailability of Engineer will result in, in City's opinion, harm to City, in which case instructions may be forwarded directly to the Contractor by the City; have authority to act on behalf of the City only to the extent provided herein and in the construction contract documents unless otherwise modified by written instrument in accordance with Section 12.1. Any instructions issued directly by City to Contractor will be promptly communicated to the Engineer if the Engineer was unavailable at the time of issuance of instructions.

1.4.3 Assist the City in conducting a pre-construction conference with the Contractor, members of City's staff, representatives of affected utility providers, and federal and state agencies having jurisdiction over the Project (including City inspectors) in order to establish construction schedules and to identify key representatives of the parties and lines of communication.

1.4.4 Assist the City in ensuring that all applicable permits and approvals have been obtained from the appropriate agencies prior to construction.

1.4.5 Make on-site inspections of the Project at least monthly to ensure familiarity with the progress and quality of the work, to determine if the work is proceeding in acceptable conformance with the construction contract documents, and to review the work with the City's designated representatives. On the basis of such on-site inspections by the Consultant, the Engineer will keep the City informed of the progress and quality of the work through written status reports and through meetings with the City's representative; and will also be reasonably available to perform site visitations at the specific request of the City by the next business day after a request is made.

1.4.6 In performing all services, including inspections, not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, for the acts or omissions of the Contractor, subcontractors or any other persons performing any of the work, or for the failure of any of them to carry out the work in accordance with the construction contract documents unless such acts or omissions are due to the negligence of the Engineer or are acts or omissions under the Consultant's control. However, Engineer will exercise its authority on behalf of City in accordance herewith and particularly during the construction phase so that all work performed by the Contractor results in a Project completed in accordance with the construction contract documents, and during any phase should the Engineer become aware of the Contractor's utilization of means, methods, techniques, sequences and/or procedures of construction which, in Consultant's opinion, will not result in completion of the Project in accordance with the construction contract documents; or which are unsafe, Engineer will immediately inform the City and will take all necessary action which the Engineer is authorized under this Agreement to take to correct the matter.

1.4.7 At all times have access to the work wherever it is in preparation or progress.

1.4.8 Determine the amounts owing to the Contractor based on its on-site professional inspections and on evaluations of the Contractor's applications for payment including comparisons of Contractor's monthly cost reports with its applications for payment and make recommendations for payment that constitute a representation by Engineer to the City, based on the Consultant's on-site inspections as provided in subsection 1.4.5 and on the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in acceptable conformance with the construction contract documents (subject to an evaluation of the work for conformance with the construction contract documents upon substantial completion, subject to the results of any subsequent tests required by or performed under the construction contract documents, subject to minor variations from the construction contract documents correctable prior to completion, and subject to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However,

the issuance of a Certificate for Payment will not be a representation that the Engineer has made any examination to ascertain how and for what purpose the Contractor has used the monies paid by the City.

1.4.9 Have authority to reject work which does not conform to the construction contract documents. Whenever, in the Consultant's reasonable opinion, it is necessary or advisable for the proper implementation of the intent of the construction contract documents, and with the approval of the City, the Engineer will have authority to require special inspection or testing of the work in accordance with the provisions of the construction contract documents, whether or not such work is then fabricated, installed or completed. The Engineer will review the work and results of all testing laboratories as required by the construction contract documents.

1.4.10 Review and make all decisions regarding the approval or taking of other appropriate action upon the Contractor's submittals, including but not limited to, shop drawings, product data and samples, schedule of values and progress schedule. Such action will be taken with reasonable promptness, but generally not to exceed 15 days or such period of time as will not cause delay of the Project.

1.4.11 Prepare minor changes in the plans and specifications as directed by the City; and prepare necessary change orders in triplicate originals for approval by the City and execution in accordance with the construction contract documents. Engineer will not issue change orders not previously approved in writing by City, and no course of conduct on the part of Engineer or City will amend, waive or alter this provision.

1.4.12 Conduct professional inspections to determine the dates of substantial completion and final completion for the Project, to evaluate the work for acceptable conformance with the construction contract documents and in light of any subsequent tests performed as described in Subsection 1.4.8 to verify that any minor deviations from the construction contract documents as described in Subsection 1.4.8 have been corrected and that the reasons for any specific qualifications in any and all previous certificates for payment as described in Subsection 1.4.8 hereof are either no longer valid or the condition(s) and/or problem(s) have been corrected; shall receive and review written warranties and related documents required by the construction contract documents and assembled by the Contractor; will issue final certificates for payment or take other appropriate action; and will make a written recommendation to the City regarding City's acceptance of the Project.

1.4.13 Require the submission by the Contractor, and subcontractors performing work on the Project site, of periodic wage rate payment reports and, with the City's assistance, verify compliance with federal and state wage rate requirements for the Project; and notice the City of any noncompliance, or of the failure by the Contractor or subcontractor's to make submissions.

1.4.14 Prepare, or cause to be prepared, and submit to the City a set of reproducible record drawings showing significant changes in the work made during the construction phase.



1.4.15 Ensure that all notices and signs required and provided by the City are posted in the appropriate locations at the Project site by the Contractor.

1.4.16 Participate in a walk-through with the City upon receipt of notification from the construction contractor that construction is complete. In addition, the Engineer will provide input to the City so that the City can prepare a punch list of items requiring corrective action by the construction contractor. Following the completion of the corrective actions, the Engineer will accompany representatives of the City on a final walk-through of the project. After determining that the corrective actions have been completed, the Engineer will recommend acceptance of the project and approval of the contractor's final payment. In addition, the Engineer will send a letter to TCEQ indicating that the construction has been completed in general accordance with the approved plans and specifications.

1.4.17 Prepare a record set of drawings based on compiled change orders and drawings of field changes provided by the contractor. The Engineer will provide the City with a Certificate of Completion, signed and sealed by a Professional Engineer at the conclusion of the record drawing review. Record drawings will be provided in digital image format (TIFF) and hard copy format.

1.4.18 Prior to the end of the one year warranty period, review the completed Project with the City and the Contractor and have all deficient items corrected. The extent of the duties, responsibilities and limitations of authority of the Engineer as the City's representative during construction will not be modified or extended after the construction contract documents have been authorized by the City to be competitively bid without written consent of the City and the Engineer and with notice to the Contractor.

## **1.5 ADDITIONAL SERVICES/CHANGE IN SERVICES**

1.5.1 Since the Consultant's compensation is a fixed fee for Basic Services, including minor deviations from those described in this Agreement, compensation to the Engineer for Additional Services will only be for substantial deviations from the scope of services described in this Agreement. The Engineer will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services.

1.5.2 Each material change (deletion or addition) in the services to be provided by Engineer must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Attachment A. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Section 15.2 of this Agreement. The approval of the City's governing body is necessary for all additional services the compensation for which exceeds \$25,000.

## **ARTICLE 2 THE CITY'S RESPONSIBILITIES**

The City will:

APAI-TXI Contract

**2.1** Provide full information to the Engineer regarding the City's requirements for the Consultant's services under this Agreement. The City will furnish the Engineer with copies of official City design standards and construction standards, and other data and information in the City's possession needed by the Engineer at the Consultant's request.

**2.2** Designate Laurie Anderson, Director of Environment and Engineering as the City's Project Manager and authorized representative to act on the City's behalf with respect to this Agreement. The City will examine the documents and information submitted by the Engineer and promptly render responses to the Engineer on issues requiring a decision by the City.

**2.3** Provide access to and make all necessary provisions for the Engineer to enter public and private property as required for the Engineer to perform its services under this Agreement.

**2.4** Be responsible for the cost of printing and binding of the bid documents.

**2.5** Bear all costs incidental to this Article.

### **ARTICLE 3 CONSTRUCTION COST**

#### **3.1 DEFINITION**

**3.1.1** The construction cost will be the total cost or estimated cost to the City of all elements of the Project designed or specified by the Consultant.

**3.1.2** The construction cost will include at current market rates, including a reasonable allowance for overhead and profit, the cost of any equipment which has been designed, specified, selected or specially provided for by the Consultant, except that used materials and equipment will be included as if purchased new for the Project.

**3.1.3** Construction cost does not include the compensation of the Engineer and the Consultant's consultants, or other costs which are the responsibility of the City as provided in Article 2.

#### **3.2 RESPONSIBILITY FOR CONSTRUCTION COST**

**3.2.1** Evaluations of the City's Project budget and detailed cost estimates, if any, prepared by the Consultant, will represent the Consultant's best judgment as a design professional familiar with the construction industry.

**3.2.2** A fixed limit of construction cost for this Project will be established by the City's representative after consulting with the Consultant. The Engineer will be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, and types of construction are to be included in the construction contract documents, to make

reasonable adjustments in the scope of the Project and to include in the construction contract documents alternate bids to adjust the construction cost to the fixed limit. The fixed limit of construction cost may be increased by the City.

3.2.3 If the lowest bona fide bid exceeds the Consultant's most recent approved cost estimate established as a condition of this Agreement, the City will (1) give written approval of an increase in such fixed limit, (2) authorize re-bidding of the Project within a reasonable time, or (3) cooperate in revising the Project scope and quality to reduce the construction cost. During the development of the Project through the phases described by Article 1 of this Agreement and prior to the City's final approval of construction contract documents, the Engineer will monitor the established probable construction cost in relation to the established fixed limit.

If necessary, the Engineer will implement construction cost savings measures or otherwise endeavor to limit probable construction cost to the level of available funds set by the City.

#### **ARTICLE 4 REIMBURSABLE EXPENSES**

4.1 Reimbursable expenses, including such things as expenses for plotting, reproduction of documents, auto travel mileage, delivery charges, long distance communications and freight are included in the Consultant's basic services compensation. Reimbursable expenses in excess of the \$6,000.00 cap are to be charged to the City by the Engineer at cost.

#### **ARTICLE 5 PAYMENTS TO THE CONSULTANT**

##### **5.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

Payments for Basic Services will be made to Engineer monthly following receipt by City of Consultant's invoices and appropriate payment requisitions. The amounts of these invoices will be based upon the extent of work completed by the Engineer on a percentage basis within each phase of services, in accordance with Article 15 of this Agreement, less any disputed amounts, pending resolution thereof.

##### **5.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

Payments on account of the Consultant's Additional Services as defined in Section 1.5 will be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred, less any disputed amounts, pending resolution thereof and an Authorization of Change in Services form executed by the Engineer and the City.

## **ARTICLE 6 CONSULTANT'S RECORDS**

**6.1** All expense records of Engineer will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.

**6.2** The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Engineer which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

**6.3** The Engineer will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

## **ARTICLE 7 OWNERSHIP AND USE OF DOCUMENTS**

**7.1** All documents prepared by Engineer in connection with this Agreement will become the property of the City whether any project related to this Agreement is executed or not. City agrees such documents are not intended or represented to be suitable for reuse for another project by City or others. Any such reuse by City or those who obtained said documents from City without written verification or adaptation by the Engineer will be without liability or legal exposure to the Consultant.

**7.2** The Engineer will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years except in the event that the Engineer goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

## **ARTICLE 8 TERM OF AGREEMENT**

**8.1** The term of this Agreement begins on the effective date established in the first paragraph of the Agreement and will end upon the Consultant's completion, and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 8.2 or 8.3 below. The Project must be completed no later than sixteen months from the date of execution of this Agreement.

**8.2** This Agreement may be terminated by either party upon 15 days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

**8.3** This Agreement may be terminated at will by the City upon at least 15 days prior written

notice to the Consultant.

**8.4** In the event of termination as provided in this Article, the Engineer will be compensated for all services performed to termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Consultant's delivering to the City all information and materials developed or accumulated by the Engineer in performing the services described in this Agreement, whether completed or in progress. The expense of reproduction of these items will be borne by the City.

## **ARTICLE 9 INSURANCE AND INDEMNITY**

**9.1** The Engineer will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property. This obligation by Engineer will not be limited by reason of the specification of any particular insurance coverage in this Agreement.

**9.2** The Engineer will procure and maintain at Consultant's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Engineer or Consultant's agents, subcontractor or employees. Before commencing the work the Engineer will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Engineer has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least 30 days written notice will have been given to the City, and will name the City as an additional insured on all coverages except workers' compensation and professional liability. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$500,000 for each occurrence and \$500,000.00 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than \$250,000.00 for injuries to any one person, \$500,000 on account of any one accident and in an amount of not less than \$250,000.00 for property damage and (3) professional liability coverage to cover lawful claims arising in connection with this Project in the combined single limit amount of at least \$500,000.00.

The stated limits of insurance required by this Paragraph are **minimum only**—they do not limit the Consultant's indemnity obligation, and it will be the Consultant's responsibility to

determine what limits are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of Certificates of Insurance that do not comply with these requirements in any respect does not release the Engineer from compliance with these requirements.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**10.1** This Agreement is governed by and will be construed under the laws of the State of Texas. All obligations of both parties are performable and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.

**10.2** As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

**10.3** The Engineer will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

**10.4** The Engineer hereby affirms that Engineer and Consultant's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code will not be considered as a valuable gift for the purposes of this Agreement.

**10.5** In performing the services required under this Agreement, the Engineer will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability or ancestry. The Engineer agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age or disability or ancestry. A breach of this covenant may be regarded as a default of the Engineer of the Agreement.

**10.6** All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

**10.7** Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

**10.8** All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

**10.9** In performing all services under this Agreement, the Consultant, its subcontractors, successors and assigns will comply with all local, state and federal laws.

**10.10** The City's execution and performance under this Agreement will not act as a waiver by the City of any immunity from suit to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

**10.11** The City of San Marcos is governed by the Texas Public Information Act ( the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Engineer shall not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

**10.12** The captions or headings included in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, articles, or sections of this Agreement.

**10.13** In the event that the performance by either the City or the Engineer of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

**10.14** In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Engineer will not waive the City's ability to enforce the Agreement after that time.

## **ARTICLE 11 SUCCESSORS AND ASSIGNS**

**11.1** The City and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Engineer will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

**ARTICLE 12**  
**EXTENT OF AGREEMENT**

**12.1** This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Engineer and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. The Consultant's expenses for travel, office, production and other expenses associated directly or indirectly with this Agreement are included as part of the total fee. Except as to a change in the scope of services, the compensation for which does not exceed \$25,000, this Agreement may be amended only by separate written instrument approved by the City's governing body and signed by both the City and Consultant.

**12.2** Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

**12.3** In the event of any conflict between the Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

**ARTICLE 13**  
**OTHER DUTIES AS SET FORTH IN THE CONSTRUCTION DOCUMENTS**

**13.1** Engineer will have such other duties and responsibilities and limitations of authority as agreed to by Engineer in writing and as are set forth in the construction contract documents for the Project. However in the event of conflict, dispute, or discrepancy between the provisions of this Agreement and the construction contract documents, the more restrictive and/or burdensome with respect to the Consultant's role and responsibility will govern and control.

**ARTICLE 14**  
**NOTICES**

**14.1** Notices required under this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:  
City Manager  
City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Fax: 512-396-4656

To the Consultant:  
Stephen J. Coonan, P.E., Principal  
Alan Plummer Associates, Inc  
6300 La Calma, Ste. 400  
Austin, Texas 78752  
Fax: 512-452-2325



**ARTICLE 15  
BASIS OF COMPENSATION**

**15.1** The City will compensate the Consultant, in accordance with Article 5, Payments to the Consultant, and the other terms and conditions of this Agreement, as follows:

**15.2** The total of all fees and expenses to be paid to Engineer for Basic Services as described in Sections 1.1 through 1.4 is a fixed fee of \$192,500.00. This compensation is divided among the Basic Services and Reimbursable Expenses as follows:

<b>PHASE 1 – PRELIMINARY ENGINEERING</b>	<b>\$ 20,000.00</b>
<b>PHASE 2 - DESIGN SERVICES</b>	<b>\$131,500.00</b>
<b>PHASE 3 – CONSTRUCTION SERVICES</b>	<b>\$ 35,000.00</b>
<b>REIMBURSEABLE EXPENSES</b>	<b><u>\$ 6,000.00</u></b>

**TOTAL FEE:** **\$192,500.00**

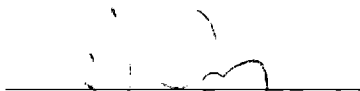
**15.3** Compensation for Additional Services of the Engineer shall be computed based on the Consultant's standard hourly rates:

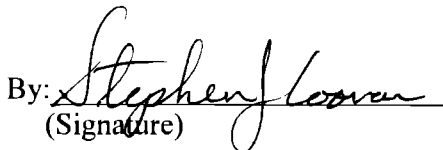
Principal	\$195.00
Senior Project Manager	\$150.00
Project Manager	\$120.00
Senior Project Engineer	\$100.00
Project Engineer	\$ 90.00
Engineer-in-Training	\$ 80.00
Senior Technician	\$ 95.00
Technician	\$ 70.00
Senior Clerical	\$ 70.00
Clerical	\$ 62.00

Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement.

City of San Marcos

Alan Plummer Associates, Inc.

  
\_\_\_\_\_  
Dan O'Leary, City Manager

By:   
\_\_\_\_\_  
(Signature)

Stephen J Coonan  
(Printed or typed name)

Principal  
(Title)

Date: 4-4-07

Date: 4/24/07

Attest:

[Signature]

Attest:

By: [Signature]  
(Signature)  
JAMES S. McMillen  
(Printed or typed name)  
Project Engineer  
(Title)

**ATTACHMENT A**

**AUTHORIZATION OF CHANGE IN SERVICES  
CITY OF SAN MARCOS, TEXAS**

**PROJECT:** TXI Reclaimed Water Line Project

**CONSULTANT:** Alan Plummer Associates, Inc.

**AUTHORIZATION NO:**

**ORIGINAL CONTRACT DATE:**

**DATE OF CHANGE:**

**WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES**

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Previous contract amount:	\$ _____
Net increase/decrease in contract amount:	\$ _____
Revised contract amount:	\$ _____

Requested by:

Alan Plummer Associates, Inc.

by: \_\_\_\_\_

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

\_\_\_\_\_  
Printed name, title

Approved by:

City of San Marcos:

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

by: \_\_\_\_\_  
Dan O'Leary, City Manager