



## **COUNCIL MEETING PROCEDURES DURING DISASTER PERIOD**

COVID-19 (Coronavirus) provides a unique concern in that gathering members of the public, City Council, and City staff within a physical setting constitutes a public health risk. The Texas Open Meetings Act (Ch. 552, Tx. Gov't Code) does not contemplate an instance where a governing body meeting might be completely virtual to avoid further spread of COVID-19. However, on March 16, 2020, the Texas Governor suspended certain requirements of the Open Meetings Act to permit open meetings to occur in a fully virtual setting (e.g., telephonic or videoconference meeting).

Based upon the above stated concerns and actions from the state government, the City Council will temporarily hold its meetings subject to the following:

- The public, City Council, and City staff can engage in self-isolation and social distancing as recommended by the Centers for Disease Control and the State of Texas;
- The public can hear open deliberations by City Council; and
- The public can interact with City Council during public comment.

The following provides a basic framework with which City Council will hold its meetings. Please keep in mind the following:

1. Please be patient as City staff implements the process and technology involved;
2. Understand that the process may change moving forward.
3. Should you wish to participate in the meeting, the earlier the better. For example, you may wish to email City Council prior to the meeting. Should you wish to speak to Council, the earlier that you can call and line-up to speak the better.

Here then is the process that City Council will use for its meetings:

1. Any person who wishes to speak on an agenda item must call by telephone between 5:00 pm and 5:30 pm. A speaker must register with the Moderator by providing a first and last name, an address, and identify the item to address. Anyone calling after 5:45 pm will not be registered to speak. After registering, the speaker must remain on hold and the call will be muted until the appropriate time. The speaker will be able to hear the meeting. At some point, the speaker will be prompted to enter the discussion by stating your full name and address. The speaker may speak for up to three minutes. Should the speaker get disconnected, it is the speaker's responsibility to call back.
2. Any person who wishes to submit a written comment on an agenda item may do so in one of the following ways. Comments must include a name, address, and the relevant item. Comments that do not include such information will not be read.
  - a. Comments may be dropped off at the City Hall Utility Payments Drop-Box by 5:30 pm the evening of the meeting.
  - b. Alternatively, comments can be email to [cmcdonald@marblefallstx.gov](mailto:cmcdonald@marblefallstx.gov) and must be received by 5:30 pm the evening of the Council Meeting.



**ALTERNATIVE CITIZEN/PUBLIC PARTICIPATION GUIDELINES  
(Due to COVID-19 Pandemic Disaster Declaration)**

***Despite the necessity to restrict public access to Marble Falls City Council Meetings in the interest of public health during COVID-19 pandemic, citizens and visitors are welcome to participate in Marble Falls City Council Meetings in an alternative way as outlined below.***

**Instructions for Callers:**

Dial the following number:

1-346-248-7799

When your call is answered you will hear “Welcome to Zoom, enter the Meeting ID followed by pound.” Enter the Meeting ID below followed by the pound sign (#).

The Meeting ID is **873-713-288**

If the moderator has not started the meeting yet, you will hear “The meeting has not started yet, please hold or call back later.” If you decide to call back later, please do so before 5:45 pm.

Once you have called into the meeting, your microphone will be placed on mute and your call will be placed in the call queue. At this point, you will hear silence on the phone. Please do not hang up. The moderator will unmute your microphone as he/she is going down the list. Once the meeting has started, you will be able to listen to proceedings even if your microphone is muted.

The moderator will be accepting calls starting at 5:00 pm. Please place your call before the 5:45 pm deadline to participate in order to allow time for calls to be loaded and queued. Calls made after this time will not be answered.

**Instructions for written comments:**

Written comments will be read into record, and can be provided in two different ways:

**OPTION 1 by hard copy** – Comments may be dropped off at the City Hall Utility Payments Drop-Box on the west side of City Hall by 5:30 pm the evening of the Council Meeting. You are required to provide your first and last name, address, and identify the item you wish to comment on.

**OPTION 2 by email** – Comments can be emailed to [cmcdonald@marblefallstx.gov](mailto:cmcdonald@marblefallstx.gov) and must be received by 5:30 pm the evening of the Council Meeting. You are required to provide your first and last name, address and identify the item you wish to comment on.

For either option, please provide **all required information** in order for your comments to be accepted. Thank you for your participation!



**NOTICE OF MEETING**  
**GOVERNING BODY OF MARBLE FALLS, TEXAS**  
**Tuesday, April 21, 2020 – 6:00 PM**  
**TELEPHONIC MEETING**  
**DIAL IN TO PARTICIPATE: 1-346-248-7799**  
**MEETING ID: 873-713-288**

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In accordance with the order of the Office of the Governor issued March 16, 2020, the Marble Falls City Council will meet in regular session at **6:00 PM on April 21, 2020 by telephone conference** in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19). **There will be no physical location for the meeting.** The meeting agenda and packet are posted online at [www.marblefallstx.gov](http://www.marblefallstx.gov).

The public dial-in number to participate in the meeting is **1-346-248-7799**  
The Meeting ID to the public meeting is **873-713-288**

The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. A recording of the telephonic meeting will be made and will be available to the public in accordance with the Open Meetings Act upon written request.

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

- 1. CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT**
- 2. INVOCATION**
- 3. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.**  
*“Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.”*
- 4. UPDATES, PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS**
- 5. CITIZEN COMMENTS.** *This is an opportunity for citizens to address the City Council concerning an issue of community interest that is not on the agenda. Comments on a specific agenda item must be made when the agenda item comes before the Council. The Mayor may place a time limit on all comments. Any deliberation of an issue raised during Citizen Comments is limited to a statement of fact regarding the item; a statement concerning the policy regarding the item or a proposal to place the item on a future agenda.*
- 6. CONSENT AGENDA.** *The items listed are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember so*

requests, in which case the item will be removed from the Consent Agenda prior to a motion and vote. The item will be considered in its normal sequence on the Regular Agenda.

- (a) Approval of the minutes of the April 7, 2020 regular meeting. *Christina McDonald, City Secretary*
- (b) Approval of Resolution 2020-R-04B continuing the Disaster Declaration previously issued on March 19, 2020 by Mayor John Packer and extended to April 21, 2020 on March 26, 2020 by the City Council, until May 19, 2020 at 11:59 pm Central Standard Time in response to the spread of COVID-19. *Russell Sander, Fire Chief*

**7. REGULAR AGENDA.** *Council will individually consider and possibly take action on any or all of the following items*

- (a) Discussion and Action on the approval of a Construction Improvement Agreement for 7 Fall Marbles, City of Marble Falls, Burnet County, Texas. *Valerie Kreger, Director of Development Services*
- (b) Discussion and Action regarding the Parks and Recreation Program, maintenance and Lakeside 1a Project Budget Adjustments. *Lacey Dingman, Director of Parks and Recreation*
- (c) Discussion and Action on the proposed project approaches and agreeing to enter into a Project Agreement with U.S. Department of Agriculture (USDA) Natural Resources Conservancy Service (NRCS) Emergency Watershed Protection (EWP) Program, which has awarded the City of Marble Falls a total of \$2,284,607.47 for design and construction of five sites that sustained damage from the October 2018 flood event. *Kacey Paul, City Engineer*
- (d) Discussion and Action regarding a contract for engineering services with Miller Gray, Inc., for engineering design, permitting, and bid phase services for all five sites identified in the Emergency Watershed Protection (EWP) Program Grant. *Kacey Paul, City Engineer*
- (e) Discussion and Action on Resolution 2020-R-04D expressing intent to finance expenditures to be incurred by the City for project costs associated with the Emergency Watershed Protection (EWP) Program, including engineering design, permitting, and construction for the five identified sites. *Kacey Paul, City Engineer*

**8. CITY MANAGER'S REPORT**

- COVID-19 response
- Update on TXDOT's sidewalk construction on Hwy. 281 between Third Street and Broadway

**9. EXECUTIVE SESSION**

**10. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION**

**11. ANNOUNCEMENTS AND FUTURE AGENDA ITEMS**

**12. ADJOURNMENT**

*“The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code, including, but not limited to, Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues) and as authorized by the Texas Tax Code, Section 321.3022 (Sales Tax Information).”*

*In compliance with the Americans with Disabilities Act, the City of Marble Falls will provide for reasonable accommodations for persons attending City Council Meetings. To better serve you, requests should be received 24 hours prior to the meeting. Please contact Ms. Christina McDonald, City Secretary at (830) 693-3615.*

**Certificate of Posting**

I, Christina McDonald, City Secretary for the City of Marble Falls, Texas, do certify that this Notice of Meeting was posting at City Hall, in a place readily accessible to the general public at all times, on the 16<sup>th</sup> day of April, 2020 at 12:30 pm and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Christina McDonald

Christina McDonald, TRMC  
City Secretary

**April 21, 2020**

**6. CONSENT AGENDA**

- (a) Approval of the minutes of the April 7, 2020 regular meeting. *Christina McDonald, City Secretary*
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**STATE OF TEXAS  
COUNTY OF BURNET  
CITY OF MARBLE FALLS**

On this the 7<sup>th</sup> day of April 2020 the City Council convened in regular session at 6:00 pm by telephone conference in accordance with the Order of the Office of the Governor issued March 16, 2020, in response to COVID-19, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

**PRESENT:** John Packer Mayor  
Richard Westerman Mayor Pro-Tem  
William (Dee) Haddock Councilmember  
Craig Magerkurth Councilmember  
Celia Merrill Councilmember  
Reed Norman Councilmember  
Dave Rhodes Councilmember

**ABSENT:** None

**STAFF:** Mike Hodge City Manager  
Caleb Kraenzel Assistant City Manager  
Christina McDonald City Secretary  
Christian Fletcher Executive Director  
Midge Dockery EDC Business Development Coordinator  
Baron Sauls Director of Finance  
Valerie Kreger Director of Development Services  
Russell Sander Fire Chief  
Mark Whitacre Police Chief  
Patty Akers City Attorney  
Angel Alvarado Human Resources Coordinator  
James Kennedy Public Works Director  
Tommy Crane Fire Marshal  
Kacey Paul City Engineer

**VISITORS:** Connie Swinney (The Highlander), Rene Rosales (Councilmember Elect Place 3)

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order at 6:01 pm and announced the presence of a quorum.
2. **INVOCATION.** Councilmember Merrill gave the invocation.

**3. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.**

Mayor Packer led the pledges.

**4. UPDATES, PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS.** There were no updates, presentations, proclamations or recognitions.

**5. CITIZEN COMMENTS.** There were no citizen comments.

**6. CONSENT AGENDA.**

**(a) Approval of the minutes of the March 17, 2020 special meeting and regular meeting and the March 26, 2020 special meeting and joint special meeting.**

**(b) Approval of Resolution 2020-R-04A, a Resolution responding to the application of ATMOS Energy Corporation – MidTex Division, to increase rates under the gas reliability infrastructure program, suspending the effective date of the application for forty-five days, authorizing the city to continue to participate in a coalition of cities known as the “ATMOS Texas Municipalities”.**

Councilmember Merrill made a motion to approve the consent agenda. Councilmember Haddock seconded the motion. The motion carried by a vote of 7-0.

**7. REGULAR AGENDA.**

**(a) Discussion and Action on Ordinance 2020-O-04B regarding acceptance of petitions to extend the City of Marble Falls’ Extra-Territorial Jurisdiction (ETJ) boundary to include an additional 88 acres, more or less, which is a portion of a 187.21-acre tract of land already located within the ETJ out of the F.S. Early Survey No. 15, and a 40.258-acre and a 9.824-acre tract of land out of the John Harper Survey No. 14, Abstract No. 393, and including certain adjacent right-of-way, being real property contiguous to the existing ETJ boundary; and accepting a right of way annexation agreement for future annexation into the city limits of certain right of way adjacent to the 187.21 acre tract, all of which property is generally located east of the city limits on FM 1431 on County Road 342.** Valerie Kreger, Director of Development Services addressed Council. Mayor Pro-Tem Westerman made a motion to approve Ordinance 2020-O-04B. The motion was seconded by Councilmember Rhodes and carried by a vote of 7-0.

**(b) Discussion and Action regarding a Development Agreement between the City of Marble Falls, the Jenkins Organization, Inc., and Leslie and Deana Holt and Dennis and Martha Sells (landowners) for development of two tracts of land with Conceptual Land Plan within the City’s Extra-Territorial (ETJ) east of the city limits located on County Road 342 and authorizing the City Manager to execute said agreement.** Valerie Kreger, Director of Development Services addressed Council. Developer Kyle Jenkins gave a brief presentation and answered questions from Council. After some discussion, Mayor Pro-Tem Westerman made a motion to approve the Development Agreement as presented. The motion was seconded by Councilmember Norman and carried by a unanimous vote (7-0).

(c) **Discussion and Action authorizing the Mayor to enter into an Economic Development Agreement between the City of Marble Falls, the Marble Falls Economic Development Corporation and R. Cockrell Enterprises LLC, providing financial support related to development costs associated with the Marble Falls Putters and Gutters location.** Caleb Kraenzel, Assistant City Manager addressed Council. Councilmember Rhodes made a motion to approve the Economic Development Agreement between the City of Marble Falls, the Marble Falls Economic Development Corporation and R. Cockrell Enterprises LLC. The motion was seconded by Councilmember Merrill and carried by a vote of 7-0.

**8. CITY MANAGER'S REPORT**

- **Update on COVID-19 response in Burnet County.** City Manager Mike Hodge and Fire Chief Russell Sander provided the update, followed by an update from Mayor Packer regarding business owners that are not considered essential still operating.
- **Update on EDC Small Business Loans in connection with Coronavirus Pandemic.** City Manager Mike Hodge provided the update.

**9. EXECUTIVE SESSION.** Council did not convene to Executive Session.

**10. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION.** No action was taken.

**11. ANNOUNCEMENTS AND FUTURE AGENDA ITEMS.** There was no discussion regarding future agenda items.

**12. ADJOURNMENT.** There being no further business to discuss, Councilmember Rhodes made a motion to adjourn. The motion was seconded by Councilmember Haddock. The meeting was adjourned at 7:21 pm.

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**John Packer, Mayor**

**ATTEST:**

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**Christina McDonald, TRMC  
City Secretary**

**April 21, 2020**

**6. CONSENT AGENDA**

(b) Approval of Resolution 2020-R-04B continuing the Disaster Declaration previously issued on March 19, 2020 by Mayor John Packer and extended to April 21, 2020 on March 26, 2020 by the City Council, until May 19, 2020 at 11:59 pm Central Standard Time in response to the spread of COVID-19. *Russell Sander, Fire Chief*

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**Council Agenda Item Cover Memo**  
**April 21, 2020**

**Agenda Item No.:** 6(b)  
**Presenter:** Russell Sander, Fire Chief  
**Department:** Fire Rescue  
**Legal Review:**

**AGENDA CAPTION**

Approval of Resolution 2020-R-04B continuing the Disaster Declaration previously issued on March 19, 2020 by Mayor John Packer and extended to April 21, 2020 on March 26, 2020 by the City Council, until May 19, 2020 at 11:59 pm Central Standard Time in response to the spread of COVID-19.

**BACKGROUND INFORMATION**

The attached Resolution extends the Disaster Declaration related to the COVID-19 pandemic to the second Council Meeting in May, May 19, 2020.

**RESOLUTION NO. 2020-R-04B**

**A RESOLUTION OF THE CITY OF MARBLE FALLS TEXAS, CONSENTING TO THE EXTENSION OF THE DECLARATION OF LOCAL DISASTER EXECUTED BY MAYOR JOHN PACKER ON MARCH 19, 2020 UNTIL MAY 19, 2020 AT 11:59 P.M. CENTRAL STANDARD TIME; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marble Falls is a Home Rule municipality acting pursuant to Chapter 9 of the Local Government Code; and

**WHEREAS**, in December 2019 a novel coronavirus, now designated COVID-19, was detected in Wuhan City, Hubei Province, China. Symptoms of COVID-19 include fever, cough, and shortness of breath. Outcomes have ranged from mild to severe illness, and in some cases death; and

**WHEREAS**, on March 11, 2020 the World Health Organization (WHO) declared COVID-19 as a pandemic; and

**WHEREAS**, on March 13, 2020, Texas Governor Greg Abbot issued a proclamation declaring a state of disaster for all counties within the State of Texas in response to the spread of COVID-19; and

**WHEREAS**, on March 19, 2020, Mayor John Packer executed a Declaration of Local Disaster, for the City of Marble Falls pursuant to section 418.108(a) of the Texas Government Code; and

**WHEREAS**, in order to extend the Declaration of Local Disaster for a period longer than seven days, the City Council must consent to such an extension pursuant 418.108(b) of the Texas Government Code; and

**WHEREAS**, on March 26, 2020, the City Council, by majority vote, extended the Declaration of Local Disaster until April 21, 2020 at 11:59 p.m. central standard time; and

**WHEREAS**, by majority vote, the City Council by this resolution has consented to such an extension of the declaration of local disaster until May 19, 2020 at 11:59 p.m. central standard time.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARBLE FALLS, TEXAS:**

**SECTION ONE.** That, in accordance with Section 418.108(b) of the Texas Government Code, the City Council hereby consents to allow the declaration of local disaster to be extended until May 19, 2020 at 11:59 p.m. central standard time.

**SECTION TWO.** This resolution shall be effective immediately from and after its passage.

**ADOPTED AND APPROVED**, this 21<sup>st</sup> day of April, 2020.

**CITY OF MARBLE FALLS:**

\_\_\_\_\_  
Mayor John Packer

**ATTEST:**

\_\_\_\_\_  
Christina McDonald, City Secretary

**April 21, 2020**

**7. REGULAR AGENDA**

- (a) Discussion and Action on the approval of a Construction Improvement Agreement for 7 Fall Marbles, City of Marble Falls, Burnet County, Texas. *Valerie Kreger, Director of Development Services*
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**Council Agenda Item Cover Memo**  
**April 21, 2020**

**Agenda Item No.:** 7(a)  
**Presenter:** Valerie Kreger, Director of Development Services  
**Department:** Development Services  
**Legal Review:**

**AGENDA CAPTION**

Discussion and Action on the approval of a Construction Improvement Agreement for 7 Fall Marbles, City of Marble Falls, Burnet County, Texas.

**BACKGROUND INFORMATION**

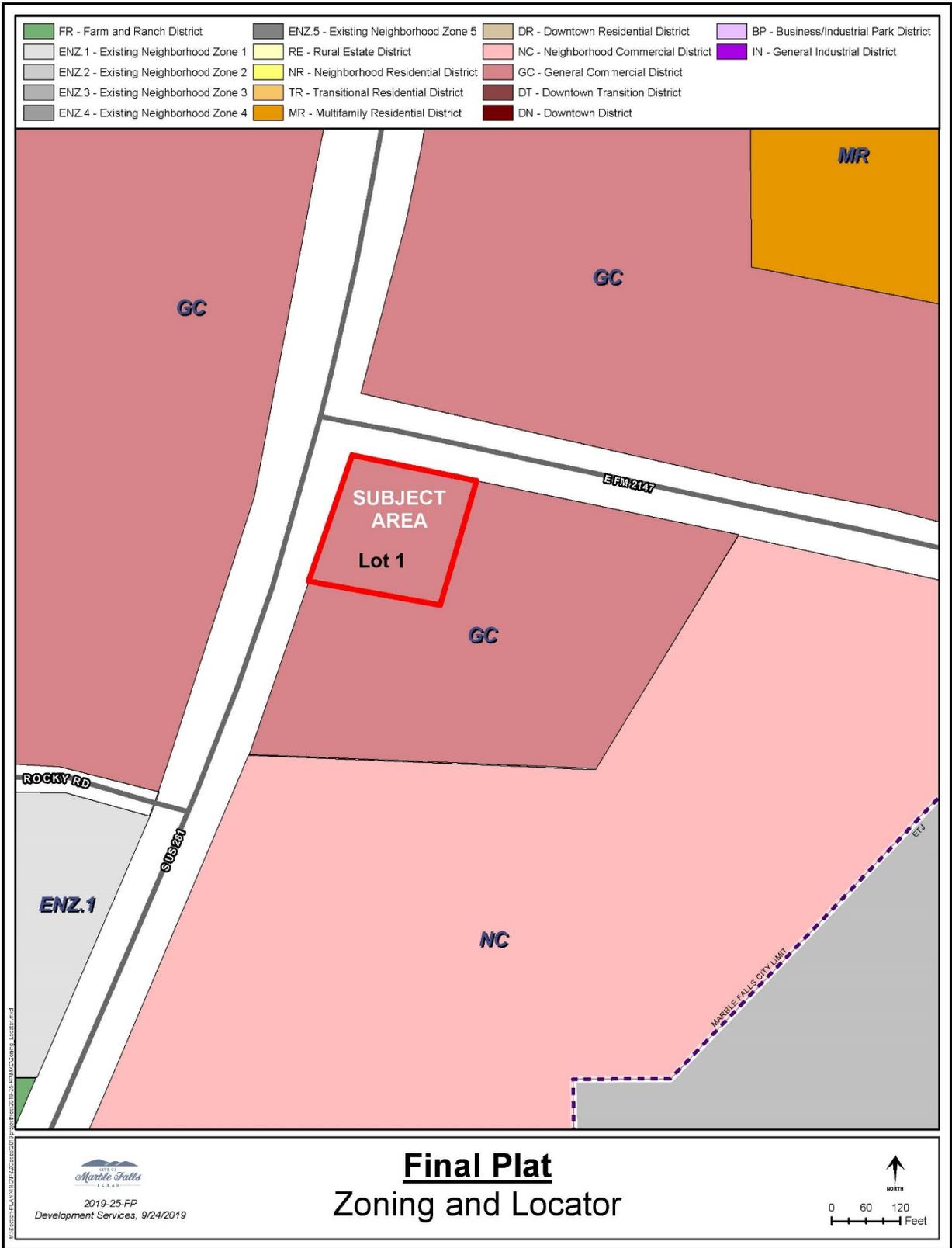
This item is regarding the Construction Improvement Agreement for the public improvements at 7 Fall Marbles. The Final Plat for the same was approved by City Council on November 5, 2019. The Construction Improvement Agreement is the mechanism that allows the developer to enter into an agreement with the City and post fiscal for cost of the proposed improvements in order to record the Final Plat prior to construction of the public improvements.

The Final Plat of 7 Fall Marbles is 1.2761 acres of unplatted land being subdivided into one lot. The Preliminary Plat was approved by City Council on October 1<sup>st</sup> 2019. The proposed lot is located at the southeast corner of US 281 and E. RM 2147. The zoning of the property is General Commercial (GC) District, with the intended use Vehicle Gas and Fueling Station. The GC district requires a minimum lot width of 50 feet and there is no minimum lot size. The proposed lot meets the minimum lot width requirement of the GC District. This subdivision does not include any new roadway. There are access easements dedicated by separate instrument that will allow access from US 281 and RM 2147.

Utility extensions will be made for water and wastewater connecting to the available lines just south of this property that run parallel to US 281. The proposed utility extensions are to be located within a utility easement, outside of Texas Department of Transportation (TxDOT) right-of-way, to be dedicated to the City by separate instrument. The public improvements will include extension of an 8-inch water line extending from the 16-inch line and a water tank which will be chlorinated and then re-introduced into the 8-inch line to the new lot.

The developer is required to enter into a Construction Improvement Agreement by which he agrees to complete all public improvements required for the subdivision in order to record the Final Plat and sell any of the lots. The required civil engineering





STATE OF TEXAS           §  
  §           **CONSTRUCTION AGREEMENT**  
COUNTY OF BURNET       §

The **CITY OF MARBLE FALLS** ("City"), a home rule municipal corporation situated in Burnet County, Texas, and **7 Fall Marbles, LLC (Davenport, John)** ("Developer"), make and enter into this Construction Agreement ("Agreement"), dated and effective on the date of the last party to sign this Agreement ("Effective Date").

**RECITALS**

**WHEREAS**, the subdivision regulations require that the Developer make various improvements (the "Improvements") extending City's roadway system, and extending City's water system by connecting to the existing water line, upon the Land described in Exhibit "A";

**WHEREAS**, the Developer has received a construction permit from the City that allows for said Improvements, consistent with Exhibit "B".

**WHEREAS**, the Developer has agreed to construct the Improvements at Developer's sole cost and expense;

**WHEREAS**, the City is authorized by subchapter C, § 212.071 et. seq. (**Developer Participation in Contract for Public Improvements**) of the **Texas Local Government Code** to execute a contract with a developer of land in the municipality to construct public improvements without complying with the notice and competitive sealed bidding procedure of Chapter 252 of the Texas Local Government Code; and

**WHEREAS**, as provided in § 212.071 of the Texas Local Government Code, the Developer and the City agree that the Developer shall construct the Improvements and associated improvements as generally depicted in Exhibit "B", attached hereto and incorporated herein for all purposes; and

**WHEREAS**, the City has determined that this Agreement and the Developer's construction of the Improvements can be accomplished in a cost efficient manner, will therefore result in an economic benefit to local taxpayers, and is in the best interests of the citizens of the City; and

**NOW THEREFORE**, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and Developer agree as follows:

## 1. DEFINITIONS.

- A. *City* means the City of Marble Falls, a Texas home-rule city and municipal corporation situated in Burnet County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
- B. *Developer* means 7 Falls Marbles, LLC, owners.
- C. *Effective Date* means the date on which the last party executes this Agreement.
- D. *Land* means the property described in Exhibit "A".
- E. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
- F. *Parties* mean the City and Developer.
- G. *Project* means the public improvements to be constructed on the Developer's property as depicted in Exhibit "B".
- H. *Improvements* means the water line and associated facilities necessary to connect the existing water line to provide potable water service to the Project in accordance with the plans approved by the City and attached hereto as Exhibit "B".

## 2. PARTIES' OBLIGATIONS

Developer shall design and construct the Improvements in accordance with all applicable governmental rules and regulations and the terms of this Agreement. Developer further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs, including labor and materials, arising from the construction of the Improvements, except as provided herein. The Developer shall be solely responsible for any cost associated with construction of the Improvements.

The Developer shall comply with all applicable federal, state and local law including all City ordinances, codes and regulations in the design and construction of the Improvements. As the Improvements will ultimately be owned and maintained by the City, prior to beginning construction of the Improvements, the Developer shall submit plans and material specifications to the City for review and approval of the City. Failure to obtain the City's final approval prior to construction or failure to comply with all applicable federal, state and local law including all City ordinances, codes and regulations shall constitute a material breach of this Agreement and permit the City to terminate this Agreement upon written notice and failure of Developer to cure such breach as provided by the City's Code of Ordinances and the City shall not be responsible for any costs incurred by the Developer through the date of termination. In addition, Developer shall obtain all permits and inspections required by the City and shall be solely responsible for any costs associated with obtaining such

permits and inspections. Upon execution of this Agreement, a schedule shall be submitted to the City Engineer as to when work will begin and be completed under this Agreement.

Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by Developer shall, in Developer's reasonable judgment, have sufficient skills and experience to properly perform the work described in the approved specifications and as shown on the approved construction plans, and shall provide adequate supervision to assure performance of the work in accordance with such approved plans and specifications.

During construction of the Improvements, the City shall be granted entry to the construction site at reasonable times to inspect the progress and quality of the construction of the Improvements and test the construction as necessary; and as deemed appropriate in accordance with and in addition to section 6.4.9 of Appendix B (Development Code) of the City's Code of Ordinances, and any applicable rules and regulations. Developer shall provide to the City a copy of all test results ordered by the Developer.

Upon satisfactory completion and prior to acceptance by the City of the Improvements and no later than thirty (30) days after completion of the construction of the Improvements, the Developer shall assign and dedicate to the City any easements Developer has or is required to obtain from third parties which provide water service to the Property and submit a written report or other written evidence of satisfactory payment by the Developer to all subcontractors, agents or vendors supplying material and/or equipment, as applicable for the construction of the Improvements. Developer shall obtain easements from third parties on an easement form acceptable to the City and shall assign such easement in an Assignment Agreement acceptable to the City. Issuance of a Certificate of Occupancy for the Project of Developer is subject to the Developer completing the construction of the Improvements pursuant to this Agreement, acceptance of the Improvements by the City and assignment of easements.

### **3. TERM**

No Certificate of Occupancy shall be issued on the Property until the Developer has completed construction of the Improvements in accordance with the approved plans and specifications, and the City has inspected and accepted the Improvements. In any event the Developer shall complete construction of the Improvements no later than the dates specified in the schedule approved by the City Engineer, subject to delays outside of the reasonable control of Developer including, without limitation, force majeure events and delays by the City and other third parties not controlled by Developer.

Unless terminated earlier as provided for herein, this Agreement shall automatically terminate after the construction and acceptance by the City of the Improvements.

If the City Engineer determines that the City's specifications or any requirements under the law have not been met and the Improvements cannot be accepted by the City, then Developer shall be solely responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs incurred in such instance. If Developer does not complete the construction of the Improvements in accordance with the terms herein, the City may elect to terminate this Agreement or complete the construction and assess the Developer with any costs to complete the construction of the Improvements.

In addition, Developer agrees to assign (to the extent assignable) a warranty on its work on the Improvements in accordance with the requirements of the City's Code of Ordinances.

#### **4. BOND AND INSURANCE REQUIRED**

The Developer must execute concurrently with the execution of this Agreement, a performance bond, letter of credit or other fiscal security for one hundred (100%) percent of the total estimated construction cost of the Improvements to secure fulfillment of all of the Developer's obligations under this Agreement. The performance bond or other fiscal security must be in a form to be approved by the City, and once executed a copy shall be provided to the City prior to commencement of construction of the Improvements. The bond, or if applicable any other fiscal security, must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code and identify the City as the named Obligee, and the City shall be notified of termination of such fiscal security if prior to the end of the term of this Agreement.

The Developer must provide a copy of a general liability policy with minimum liability limits of \$325,000.00 per occurrence with aggregate coverage of \$650,000.00 and name the City as an additional insured.

#### **5. INCREASED COSTS**

It may be anticipated that additional costs may arise regarding construction of the Improvements through site conditions or latent defects; however, Developer agrees that it will be solely responsible for payment of all costs for the Improvements whether known at the time of execution of this Agreement or discovered after execution of the Agreement.

#### **6. NOTICE OF DEFAULT; OPPORTUNITY TO CURE; REMEDIES**

Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.

Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, or such additional period of time as may be reasonable and necessary under the circumstances, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.

Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon any default continuing beyond notice and cure periods by Developer under this Agreement, the City may terminate this Agreement and may withhold building or development permits for the Project or Certificates of Occupancy until the provisions of this Agreement are satisfied. Developer shall remain responsible for all cost to construct or complete the Improvements whether or not this Agreement is terminated.

No prior written notice shall be required to terminate this Agreement if there is an imminent threat to the public health, safety and welfare, and the City may take any and all actions as necessary to mitigate the immediate threat and assess the reasonable costs to the Developer.

## **7. MISCELLANEOUS**

**A. Entire Agreement.** This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.

**B. Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

**C. Other Instruments, Actions.** The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement. In particular, Developer shall be responsible for providing City with copies of all engineering and construction drawings, designs and connections associated with the water and wastewater systems and other Improvements constructed by Developer and intended for acceptance by the City.

**D. No Third Party Rights or Obligations.** No person or entity not a party to this Agreement shall have any third party beneficiary or any other rights against the parties to this Agreement.

**E. Applicable Law; Venue.** This Agreement shall be construed under and according to the laws of the State of Texas. Jurisdiction and venue for any suit arising hereunder shall be in Burnet County, Texas.

F. **Severability.** The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

H. **Notices.** For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

**CITY:**

800 Third Street  
Marble Falls, Texas 78654  
Attn.: City Manager  
Phone: (830) 693-3615  
Fax: (830) 693-6737

**DEVELOPER:**

7 FALL MARBLES, LLC  
310 Comal St., Building A, Suite 301  
Austin, TX 78703  
Phone: (512) 507-7048

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

I. **No Waiver of Development Ordinances.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision of any other agreement, or of any regulation, requirement or ordinance, if any, applicable to the Land or to the Project. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of Developer under applicable ordinances, including but not limited to the Code of Ordinances or the water and wastewater regulations.

J. **Attorney's Fees.** Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

K. **Governmental Authority.** Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and utility improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

L. **Assignability.** This Agreement shall not be assignable by Developer without the prior written consent of the City.

M. **Binding Obligation.** This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

N. **Indemnification.** This Agreement is not intended to alter or reallocate any defense or immunity presently authorized to either party by law. The City shall not be subject to any obligations or liabilities of the Developer incurred in the performance of this Agreement. Developer has voluntarily agreed to undertake the construction of the public improvements. **DEVELOPER SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY AND ALL CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S SUCCESSORS, ASSIGNS, GRANTEEES, VENDORS, TRUSTEES OR REPRESENTATIVES, BROUGHT PURSUANT TO THIS AGREEMENT OR THE CLAIMS OR TYPES OF CLAIMS DESCRIBED IN THIS PARAGRAPH. CITY SHALL HAVE NO RESPONSIBILITY OR OBLIGATION FOR INDEMNIFICATION OR DEFENSE OF DEVELOPER IN THIS AGREEMENT.**

O. **Ambiguities Not to Be Construed against Party Who Drafted Agreement.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

P. **No Special Relationship.** The parties' do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship by executing this Agreement.

Q. **Authorized Signature.** The person executing this Agreement on behalf of the Developer warrants to the City that the Developer is a duly authorized to do so, is qualified to do business in the State of Texas, and that Developer has full right and authority to enter into this Agreement, and that every person signing on behalf of Developer is authorized to do so.

Executed on the dates set forth below, to be effective as the date of the last party to sign this Agreement ("Effective Date").

**CITY OF MARBLE FALLS, TEXAS**

Date: \_\_\_\_\_, 2020

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

Name: John Packer

Title: Mayor

ATTEST:

\_\_\_\_\_  
Christina McDonald, City Secretary

**7 FALL MARBLES, LLC**

By: John Davenport

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, authorized agent for \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration herein expressed and in the capacity herein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_ County, \_\_\_\_\_

My commission expires \_\_\_\_\_





# Exhibit “C” – Construction Estimate (Page 1 of 1)



April 15, 2020

City of Marble Falls Development Services  
801 Fourth Street  
Marble Falls, Texas 78654

RE: **7-Eleven #1044496**  
**100 E FM 2147**  
**2019-254 Water Supply Memo**

Dear Valerie:

Please accept this letter as preliminary plan for the water improvements to be included with the 7-Eleven development mention above. The proposed improvements include a Chlorinator and Metering Station as well as Sampling Ports and the SCADA equipment necessary for monitoring chlorination levels. The proposed improvements will provide an 8 inch waterline extension for public use. Please see below for a preliminary pricing estimate for the various improvements.

ITEM	ESTIMATED COST
CHLORINATOR AND METERING EQUIPMENT	\$125,000
SCADA MONITORING	\$125,000
PRESSURE REDUCING VALVE	\$50,000
OVERALL COST	\$300,000

If you need any further information or clarification please give me a call at 512-900-4151

Andrew Evans, P.E.

KIMLEY-HORN AND ASSOCIATES, INC.

**April 21, 2020**

**7. REGULAR AGENDA**

- (b) Discussion and Action regarding the Parks and Recreation Department's program, maintenance, and Lakeside 1A project budget adjustments. *Lacey Dingman, Director of Parks and Recreation*
-



**Council Agenda Item Cover Memo**  
**April 21, 2020**

**Agenda Item:** 7(b)  
**Presenter:** Lacey Dingman, Director of Parks and Recreation  
**Department:** Parks and Recreation

**AGENDA CAPTION**

Discussion and Action regarding the Parks and Recreation Department's program, maintenance, and Lakeside 1A project budget adjustments.

**BACKGROUND**

The purpose of this item is to consider appropriate action and possibly funding for the following items:

**A. Lakeside Pavilion HVAC Upgrade:** December 2019, two bids were received for replacing the existing 25-ton unit with a 40-ton HVAC system at the Lakeside Pavilion. The bids included HVAC equipment, controls, ductwork, grilles and registers along the electrical circuit, disconnect and wiring modifications. The two bids received were the following:

- i. All Star \$280,150.00
- ii. Hot Rod Mechanical \$282,079.00

Therefore, the contract was not awarded, due to the bids exceeding available funds to complete the project and neither vendor being able to meet the specified time frame for completion. Since, staff has had a third-party engineer perform a review of the proposed design and plan for the HVAC upgrade. Feedback was consistent with the design and appropriate for the building, according to the third-party.

The HVAC upgrades were among other facility improvements intended to be completed. The overall project was budgeted at \$181,500 and a tax note was sold in order to fund the project. The chart below is a list of items of expenditures that have been funded to date with the current revenue available.

Engineering & Design of HVAC	\$9400.00
Roof Repair & New Insulation	\$48,312.00
Floor Refinishing	\$15,388.00
Appliances	\$15,953.96
Exterior Paint	\$20,266.30

Stucco Repair	\$14,850.00
Landscaping	\$6,500.00
TOTAL	\$130,670.26

This leaves a balance of \$50,829.74. In order to proceed with the HVAC portion of the renovations, additional funding is necessary.

The facility is currently blocked off from reservations from October 2020 to February 2021 to allow time for the renovations. Our goal in presenting this item is to come to a decision point in to re-open the reservation calendar for this period or keep the planned renovation as scheduled.

**B. Barge Purchase:** The City has funded the rental of a barge annually to host the July 4<sup>th</sup> firework display. The cost for rental has been \$7500 per year. However, the company that has been sourced is no longer available for rental and will be selling the barge. They have offered us first-right of refusal for the purchase of the barge for the amount of \$35,000.00.

- The barge is a custom built 40 x 24 non self-propelled floating steel barge decked with ¾" plywood with a fire-resistant coating, with the maximum capacity of 15000#. The anchoring system includes four (4) battery operated winches with remotes.

Staff has negotiated for the company to delivery and set up the barge for the 2020 July 4<sup>th</sup> celebration in order to train staff on the assembly and operation of the barge. The barge was constructed in 2018 and the life expectancy is over 15 years for the barge. No guarantees or warranties are being offered with the purchase. Staff has inspected the barge and it is good condition and the decking and frame will be repainted prior to delivery. Staff has also negotiated a payment plan with the company, requiring 1/3 of the purchase price (\$11,667) in June and the remainder to be paid in FY2021. The community donation fund currently has a balance of \$47,943.85 which can be used for this initial payment.

Through the process, staff reaffirmed that there are no dry land options for discharging fireworks; therefore, the acquisition will be necessary in order to host a firework show in 2020 and subsequent years.

**C. Fireworks purchase:** The current quote for fireworks \$25,000.00 for an eighteen (18) minute show. The initial deposit of 50% is due at the end of April; however, due to the uncertainty created by the Covid-19 pandemic, the company has confirmed that they will be issuing refunds for the deposit or allow for a reschedule to a later date if the event is cancelled due to the virus. The cost of the fireworks is funded through the community donation fund.

**D. Lakeside 1A Project Finish-Out Items:** With the construction of Lakeside 1A, there were several items that have been and are scheduled to be completed out of the FY 2020 Park Maintenance line item within the General Fund, causing an anticipated

overage for the line item for the budget year. Also, staff is experiencing operational and maintenance concerns regarding the current design of Lakeside Park. Staff continues to have discussions internally and with the design and engineer team to reach solutions. Council's input is desired to discuss strategy for possible adjustments needed to the facility.

**E. Lakeside 1A Expenses:** The cost for construction services paid to Halff Associates to manage the Lakeside 1A project has exceeded initial estimates. Additional funds will be needed cover these expenses.

**F. Lakeside 1A Change Order Proposal:** Myers Concrete Construction has submitted a change order proposal for items that have been completed but were not formally executed in the change order approval process. Staff was able to verify and find acknowledgement of some items proposed in field or meeting notes. However, a large portion of the change order proposal is in dispute. Staff is meeting with Myers Concrete again this week, in hopes to come to a resolution.

#### RECOMMENDATION

Staff recommends the following for each item:

- A) Lakeside Pavilion HVAC Upgrade:** Due to the amount of this upgrade and the current fiscal climate, staff recommends delaying this project until 2021. This will also allow the department to go through a summer season to see the true impact of the upgraded insulation that was installed Jan 2020. Also, many reservation cancellations were necessary from March through May, opening the facility in October, offers more flexibility in rescheduling events.
- B) Barge Purchase:** Staff recommends using the community donation fund to make the initial payment for the barge and to allocate the remainder of the amount due in the FY2021 budget.
- C) Fireworks Purchase:** Staff recommends proceeding with the 50% deposit, with the assurance that the deposit is fully refundable from the vendor. Once we have a clearer picture of the economic and health impact, closer to the event, we should reevaluate the viability of the event.
- D) Lakeside 1A Project Finish-Out Items:** Staff recommends the remaining balance of the 2019 Tax Note intended to fund the Pavilion HVAC and the revenue proceeds from the sale of the aerial easement to LCRA to fund the items that have been completed and the remaining incomplete items at the Lakeside Park. Furthermore, staff recommends evaluating any maintenance issues through the 2020 summer; then developing a plan to and/or addressing any needs for changes to be during the Fall / Winter of 2020.
- E) Lakeside 1A Expenses:** Staff recommends using the remaining revenue proceeds from the sale of the LCRA aerial easement revenue to fund the items that have been completed and the remaining incomplete items at the Lakeside Park.
- F) Lakeside 1A Change Order Proposal:** Depending on the outcome of the discussions with the contractor and staff this week, staff recommends paying

the portion of the change order proposal that could be verified if an agreement can be reached on the portion that is in dispute.

**April 21, 2020**

**7. REGULAR AGENDA**

- (c) Discussion and Action on the proposed project approaches and agreeing to enter into a Project Agreement with U.S. Department of Agriculture (USDA) Natural Resources Conservancy Service (NRCS) Emergency Watershed Protection (EWP) Program, which has awarded the City of Marble Falls a total of \$2,284,607.47 for design and construction of five sites that sustained damage from the October 2018 flood event.  
*Kacey Paul, City Engineer*
-



## Council Agenda Item Cover Memo April 21, 2020

**Agenda Item No.:** 7(c)  
**Presenter:** Kacey Paul, P.E., City Engineer  
**Department:** Engineering  
**Legal Review:**

### AGENDA CAPTION

Discussion and Action on the proposed project approaches and agreeing to enter into a Project Agreement with U.S. Department of Agriculture (USDA) Natural Resources Conservancy Service (NRCS) Emergency Watershed Protection (EWP) Program, which has awarded the City of Marble Falls a total of \$2,284,607.47 for design and construction of five sites that sustained damage from the October 2018 flood event.

### BACKGROUND

The EWP Program is a federally funded grant program from the USDA Department. The Program helps local communities recover after a natural disaster strikes and offers technical and financial assistance to help relieve imminent threats to life and property caused by floods, fires, windstorms, and other natural disasters that impair a watershed.

The City of Marble Falls has been awarded a grant through the USDA NRCS EWP Program. 5 sites that experienced erosion issues from the October 2018 flood event were identified for the awarded grant. Those sites include:

- Avenue N crossing at Backbone Creek
  - Erosion in Backbone Creek upstream and downstream of Avenue N bridge, including scour hole at the downstream side



- Avenue J crossing at Backbone Creek
  - Erosion in Backbone Creek upstream and downstream of Avenue J bridge
  - *Note that funds from this program cannot be used to reimburse for work already completed.*



- Raw Water Intake at Lake Marble Falls
  - Sediment deposit along shoreline, which could threaten the City's raw water intake straw and water quality



- Backbone Creek at Buena Vista
  - Bank erosion and structural damage in Backbone Creek adjacent to Buena Vista Dr.



- Backbone Creek at LCRA tower
  - Bank erosion in Backbone Creek near the previous LCRA transmission tower



The EWP Program has awarded money in a cost-share grant with EWPP at 75/25 and will be issued via reimbursement for construction expenses. The total breakdown for construction costs is \$2,105,629 from NRCS and \$701,876.33 from the City.

Additionally, NRCS offers Technical Assistance (TA) costs of 8.5% of the total NRCS contribution, totaling \$178,978.47. The TA funds can be used for engineering services, contract management, etc. This amount is not meant to fully cover engineering costs.

The proposed engineering design contract total is \$339,822, leaving a City portion of \$160,843.53.

The total commitment to the City is \$701,876.33 for 25% match on construction costs and \$160,843.53 for the City's portion to cover engineering, for a total of \$862,719.86.

Once the Project Agreement is signed, the City of Marble Falls has 220 calendar days to complete construction. No additional days are granted for inclement weather. At the end of the project timeline, all unused funds will be de-obligated to the project. Invoices for work received prior to that deadline will be paid by the funds that have been obligated to the project. In the event that additional time is needed, there are opportunities for extensions, contingent on progress status.

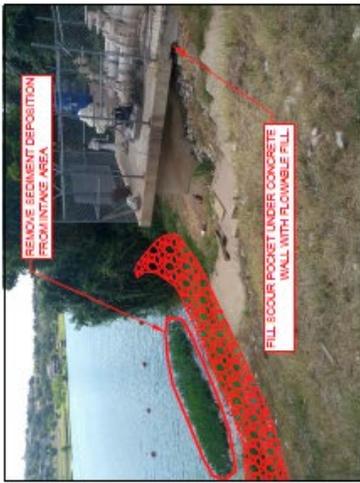
### **RECOMMENDATION**

City staff recommends approval of the currently drafted Project Agreement for the EWP Program. The current draft Statement of Work included here is the bulk of what will be in the Project Agreement, which is in final review with NRCS. The final product will include basic document elements like a cover page, contact page, and signature page. Should there be any substantial changes to the Project Agreement, City staff will bring the agreement back to Council for further review.

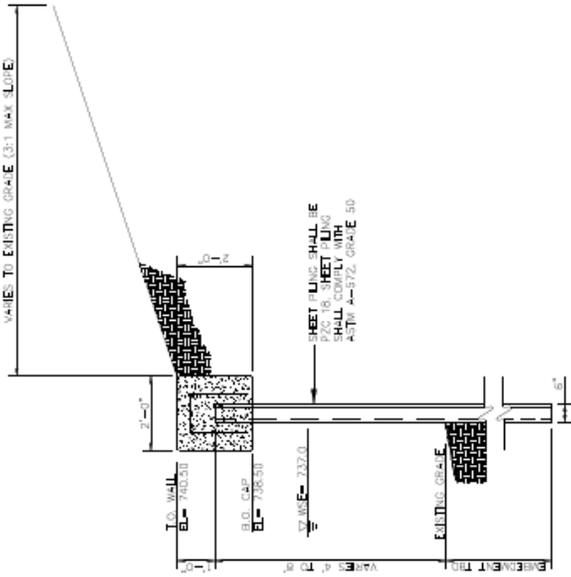
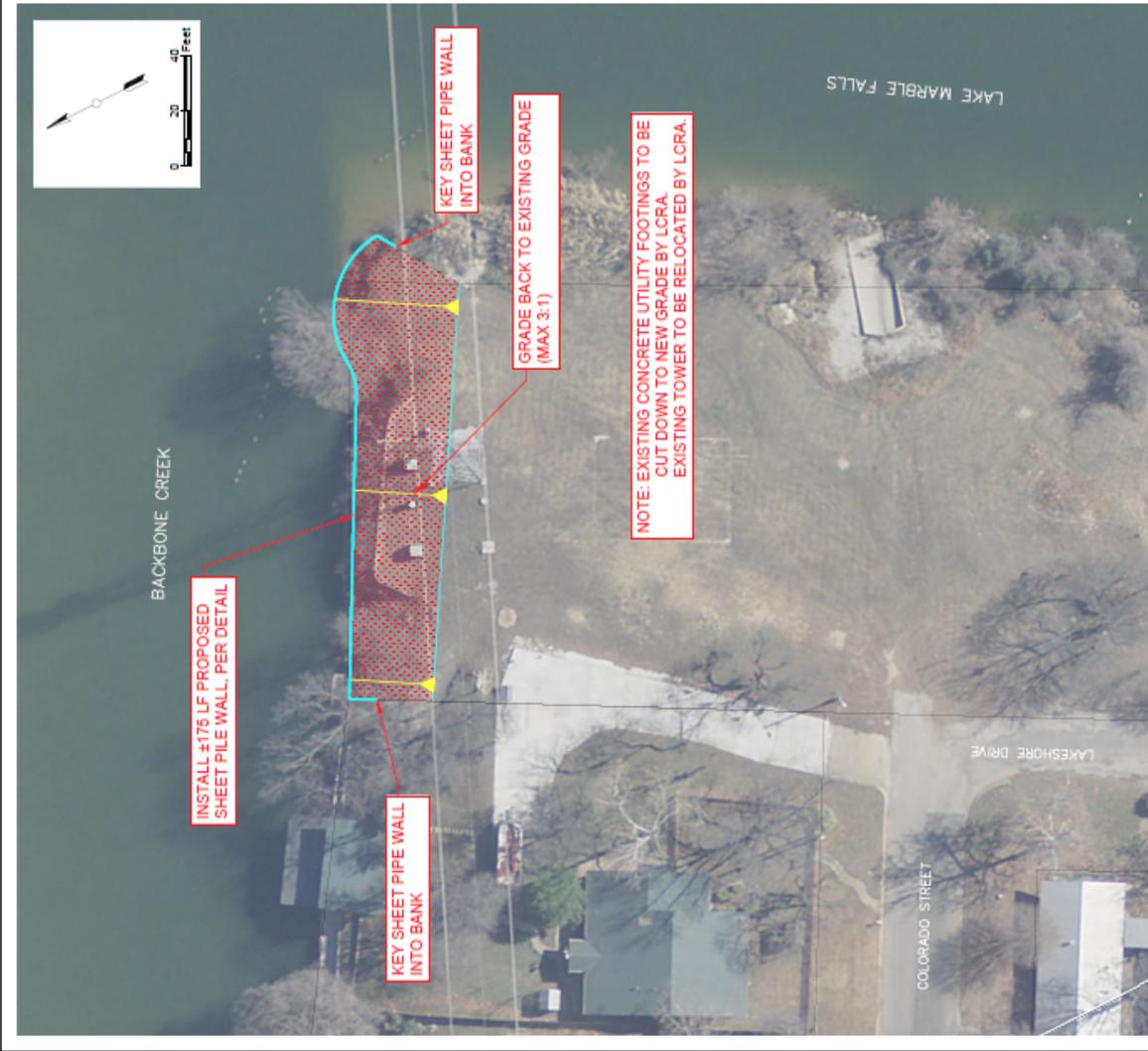
#### **Memo Contents:**

- |   |               |
|---|---------------|
| • Conceptual Level Designs for Sites 1-5    | Pages 6 – 11  |
| • Draft Project Agreement/Statement of Work | Pages 12 - 20 |





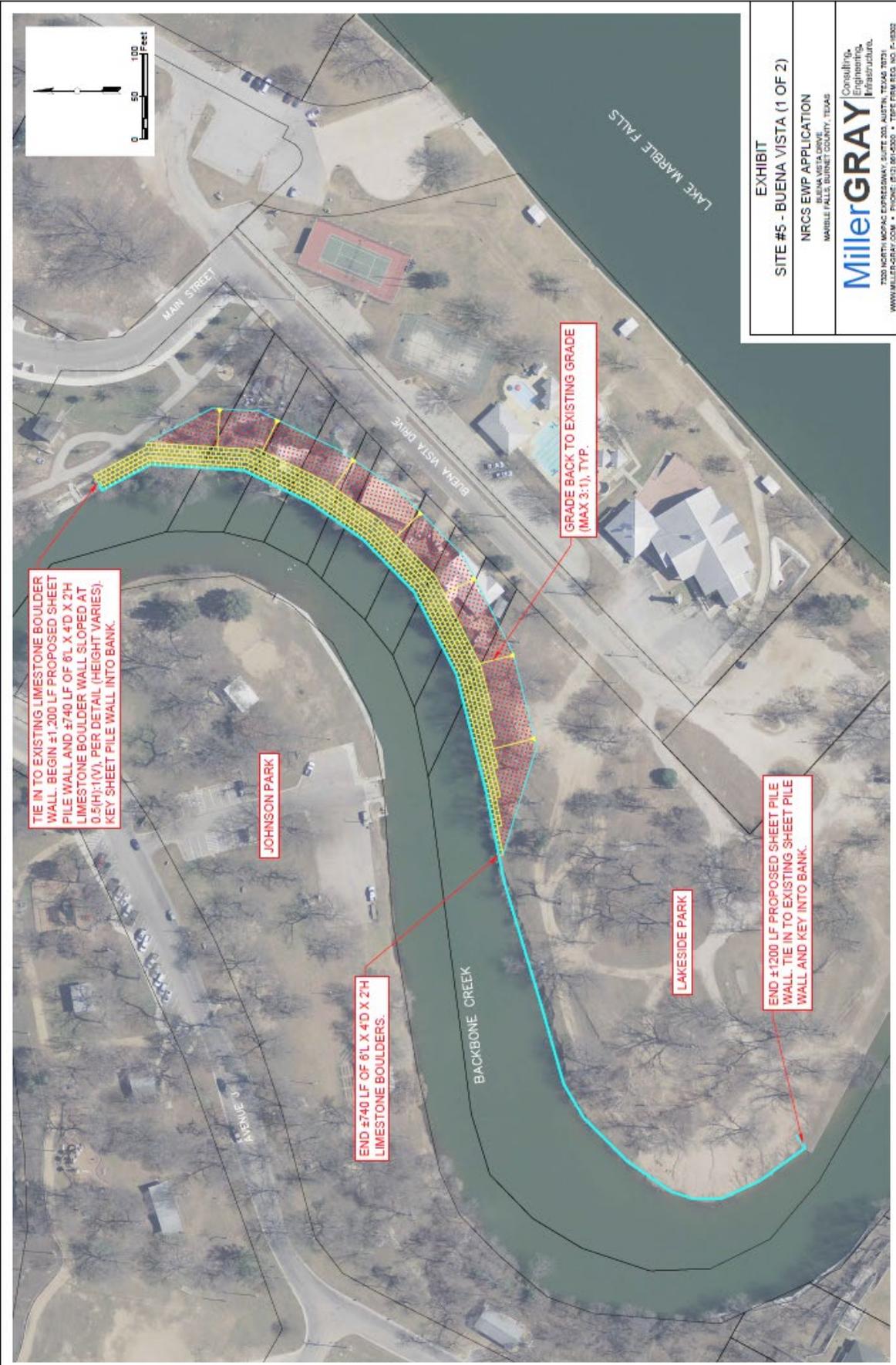
<b>EXHIBIT</b>
<b>SITE #2 - RAW WATER INTAKE</b>
NRCS EWP APPLICATION LAKE SHORE DRIVE MARBLE FALLS, BENTON COUNTY, TEXAS
<b>MillerGRAY</b> Consulting, Engineering, Infrastructure 7330 NORTH MOPAC EXPRESSWAY, SUITE 202, AUSTIN, TEXAS 78731 WWW.MILLERGRAY.COM • PHONE: (512) 861-0300 • TDD: (512) 861-0302



TYPICAL SHEET PILE WALL DETAIL  
SCALE: N.T.S.

EXHIBIT
SITE #3 - LCRA TRANSMISSION MAIN
NRCS EWP APPLICATION MARBLE FALLS, BURNET COUNTY, TEXAS
<b>MillerGRAY</b> Consulting, Engineering, Infrastructure. 7330 NORTH MOPAC EXPRESSWAY, SUITE 200, AUSTIN, TEXAS 78751 WWW.MILLERGRAY.COM • PHONE: (512) 861-6369 • TYPED FROM REG. NO. F-14832





PT:\01\City of Marble Falls\BWP\Program Support\CADD\EWP\Exhibit\190701\SITE 5 - BUENA VISTA.dwg 1/26/2019 3:09 PM

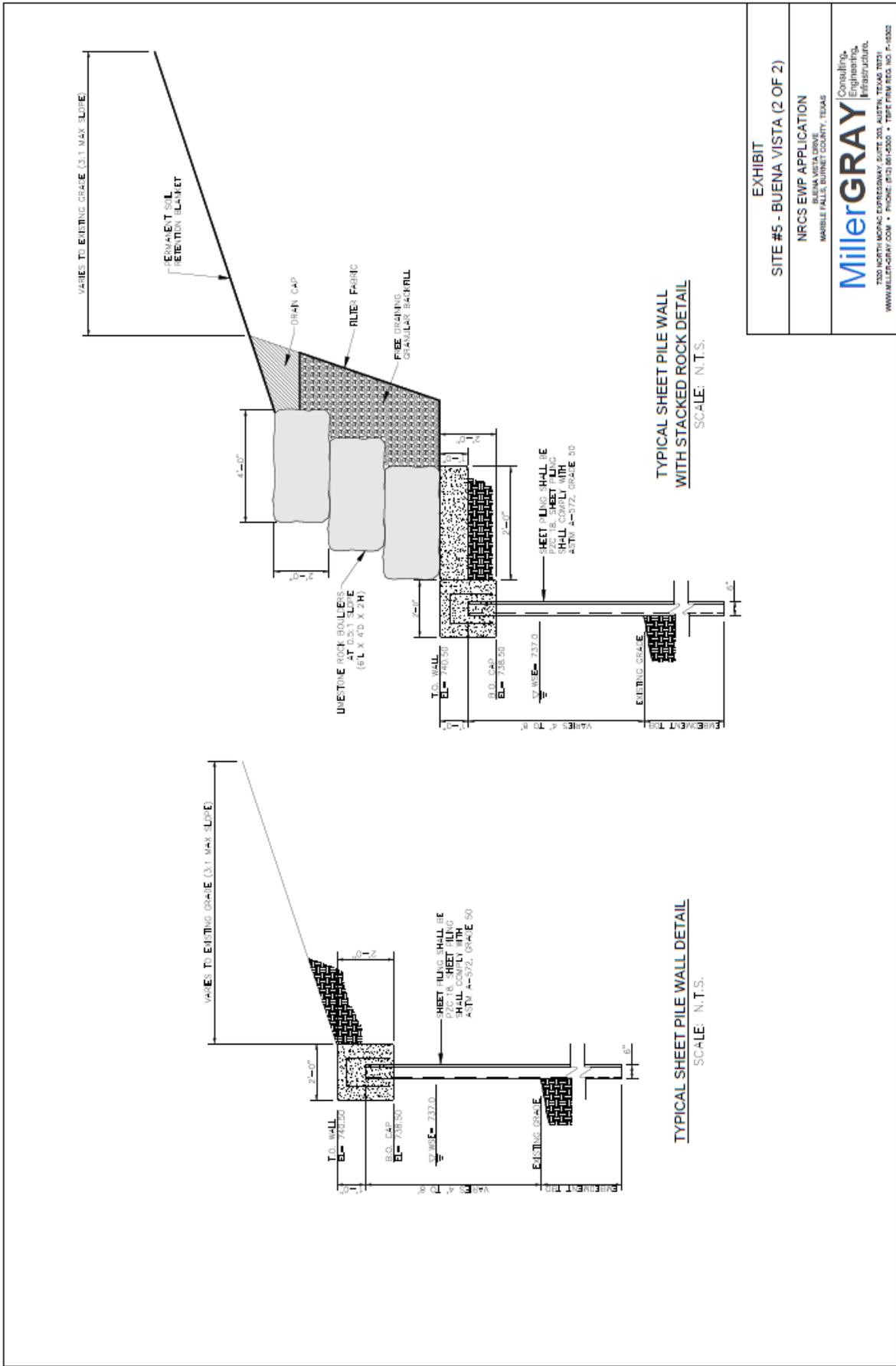


EXHIBIT
SITE #5 - BUENA VISTA (2 OF 2)
NRCS EMIP APPLICATION BUENA VISTA TRACT MARBLE FALLS, BURNET COUNTY, TEXAS
<b>MillerGRAY</b> Consulting, Engineering, Infrastructure 7320 NORTH MOPAC EXPRESSWAY, SUITE 300, AUSTIN, TEXAS 78757 WWW.MILLERGRAY.COM • PHONE (512) 817-5555 • TEXT (512) 817-1482

AGREEMENT ID: 800000XXXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

## EMERGENCY WATERSHED PROTECTION PROGRAM STATEMENT OF WORK

### PURPOSE

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the "NRCS", to provide technical and financial assistance to City of Marble Falls, hereinafter referred to as the "Sponsor", for EWP Project # 5106 in Burnett County, TX for implementation of recovery measures, that, if left undone, pose a risk to life and/or property.

### OBJECTIVES

The design and installation of EWP measures as detailed in the individual Damage Survey Report (DSR) and described here:

- City of Marble Falls - 48-25-18-5106-001: Rock rip rap placed along channel bottom and banks at select locations for structural protection and erosion control by reestablishing flow lines, side slopes, and armor areas that have been compromised due to storm events. (DR4416) \$2,807,505.33

### BUDGET NARRATIVE

#### A. The estimated costs for the Project:

1. Total Estimated Project Budget: \$ 2,986,483.80

The budget includes:

Financial Assistance (FA) Costs:

Construction Costs (75% NRCS \$2,105,629.00 + 25% Sponsor \$ 701,876.33): \$ 2,807,505.33

Technical Assistance (TA) Costs:

100% NRCS (8.5% of total NRCS contribution): \$178,978.47

2. NRCS pays up to 75 percent of eligible construction costs, and Sponsor pays 25 percent of construction costs. NRCS will contribute up to 8.5 percent of the total NRCS contribution for contract administration and construction management costs. It is possible that technical and administrative costs will exceed this amount, requiring the Sponsor to contribute resources to complete technical and administrative work.
3. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for financial assistance (FA) and one for technical assistance (TA). FA costs are associated with construction activities; TA costs are associated with services. These expenditures shall be accounted for separately in order for expenses to be eligible for reimbursement.
4. NRCS will provide FA for actual costs as reimbursement to the Sponsor for approved on-the-ground construction costs, subject to above limits. If costs are reduced, reimbursement will be reduced

AGREEMENT ID: 600000XXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

accordingly. Construction costs are associated with the installation of the project measures including labor, equipment and materials.

5. NRCS will provide TA reimbursement to the Sponsor for technical and administrative costs directly charged to the project, subject to the above limits. If costs are reduced, reimbursement will be reduced accordingly. These costs include
  - a. engineering costs include, but not limited to, developing a project design that includes construction drawings and specifications, an operation and maintenance plan, a quality assurance/inspection plan and an engineer's estimate of the project installation costs in addition to providing necessary quality assurance during construction.
  - b. contract administration costs include, but not limited to, soliciting, evaluating, awarding and administering contracts for construction and engineering services, including project management, verifying invoices and record keeping.
6. The Sponsor will contribute funds toward the total construction costs in either direct cash expenditures, the value of non-cash materials or services, or in-kind contributions. The value of any in-kind contribution shall be agreed to in writing prior to implementation.

#### RESPONSIBILITIES OF THE PARTIES

##### A. Sponsor will—

1. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.
2. Ensure and certify by signing this agreement that its cost share obligation is from a non-Federal source.
3. Designate a project liaison to serve between the Sponsor and NRCS and identify that person's contact information with this executed agreement. Any change in the project liaison during the terms of this agreement must be immediately communicated to NRCS.
4. Appoint a contracting officer and an authorized representative who will have authority to act for the contracting officer, listing their duties, responsibilities, and authorities. Furnish such information in writing to the NRCS State Conservationist.
5. Comply with the terms and conditions of this agreement and the attached general terms and conditions except those that are not applicable to State and local governments.
6. Acquire and provide certification to NRCS that real property rights (land and water), permits and licenses in accordance with local, state, and Federal laws necessary for the installation of EWP project measures have been obtained at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Sponsors shall provide such certification on Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition. Sponsors shall also provide an attorney's opinion supporting this certification.

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AGREEMENT ID: B00000XXXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

Costs related to land rights and permits are the Sponsor's responsibility and ineligible for reimbursement.

7. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project.
8. Provide the agreed-to portion of the actual, eligible and approved construction cost. These costs may be in the form of cash, in-kind construction services, or a combination of both. Final construction items that are eligible construction costs will be agreed upon during the pre-design conference. These costs consist of costs from contracts awarded to contractors and eligible Sponsor in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs. Construction costs incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.
9. Be responsible for 100 percent of all ineligible construction costs and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the DSR.
10. Account for and report FA and TA expenditures separately in order for expenses to be eligible for reimbursement. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for TA and one for FA, requiring this separation.
11. Prepare design, construction specifications, and drawings in accordance with standard engineering principles that comply with NRCS programmatic requirements; and/or contract/install the designed construction. Any design services will be by a professional registered engineer. Sponsor will obtain NRCS review and concurrence on the design, construction plans, and specifications. The Sponsor must ensure description of work is reviewed, concurred, and approved by NRCS. A copy of the final signed and sealed plans and specifications shall be provided to NRCS.
12. Contract for services and construction in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317 through 200.326, applicable State regulations, and the Sponsor's procurement regulations, as appropriate. (See general terms and conditions attached to this agreement for a link to the CFR.) In accordance with 2 CFR § 200.326, contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.
13. The contracts for design services and construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.
14. For contracts, provide NRCS a copy of solicitation notice, bid abstract, and notice of contract award, or other basis of cost and accomplishment.

AGREEMENT ID: 800000XXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

15. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and values. The Plan of Operations shall be concurred in by NRCS at the pre-design conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.
16. The following documentation is required to support the Sponsor's request for reimbursement of in-kind construction services:
  - a. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
  - b. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
  - c. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
  - d. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.
17. Prior to commencement of work and/or solicitation of bids, submit for NRCS review and concurrence a Quality Assurance Plan (QAP). The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.
18. Provide construction inspection in accordance with the QAP.
19. Prepare and submit for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commence of work. The O&M Plan shall describe the activities the Sponsor will do to ensure the project performs as designed. Upon completion of the project measures, the Sponsor shall assume responsibility for O&M.
20. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, state, and local statutes and ordinances prior to solicitation for installation of the EWP project measures. All modifications to the plans and specifications shall be reviewed and concurred on by NRCS.
21. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.

AGREEMENT ID: 800000XXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

22. The Sponsor must secure at its own expense all Federal, State, and local permits and licenses necessary for completion of the work described in this agreement as well as any necessary natural resource rights and provide copies of all permits and licenses obtained to NRCS.
23. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.
24. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by NRCS Program/Technical Contact. Provide NRCS Program/Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.
25. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.
26. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements. Provide a PE certification that the Project was installed in accordance with approved plans and specifications.
27. Provide PE-certified as-built drawings and quantities for the project. A copy of the as-built drawings will be submitted to the NRCS Program/Technical Contact.
28. Pay the contractor(s) for work performed in accordance with the agreement and submit a SF-270, "Request for Advance or Reimbursement" to the NRCS Program/Technical Contact with all documentation to support the request. Final payment request shall be submitted within 90 calendar days of completion of the EWP project measures. Payments will be withheld until all required documentation is submitted and complete.
  - a. The required supporting documentation for reimbursement of construction costs include invoices and proof of payment to the contractor showing the items and quantities installed and certified by the engineer of record along with any supporting documentation such as quantity calculations, rock weight tickets, etc.
  - b. The required supporting documentation for reimbursement of in-kind construction expenses will include employee time sheets, employee hourly rate, equipment operating logs, equipment hourly rate, and material quantities and invoices.
  - c. The required documentation for reimbursement of technical and administrative services will be invoices and proof of payment to consultants and/or employee time

AGREEMENT ID: 800000XXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

sheets along with the employee's hourly rate, hours worked, and date work was performed.

29. Ensure that information in the System for Award Management (SAM) is current and accurate until the final financial report (SF-425) under this award or final payment is received, whichever is later.
30. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this Agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the Project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise, consult with, and obtain prior written concurrence of NRCS on any litigation matters in which NRCS could have a financial interest.
31. Sponsor must indemnify and hold NRCS harmless to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Sponsor in connection with its acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement. Further, the Sponsor agrees that NRCS will have no responsibility for acts and omissions of the Sponsor, its agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement that result in violation of any laws and regulations that are now or that may in the future become applicable.
32. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.
33. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.
34. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of NRCS, assign and transfer to NRCS any or all claims, demands, and causes of action of every kind whatsoever that the Sponsor has against the contractor or his or her sureties.

AGREEMENT ID: 800000XXXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

**B. NRCS will—**

1. Assist Sponsor in establishing design parameters; determine eligible construction costs during the pre-design conference.
2. Designate a Government representative (GR) to serve as liaison with the Sponsor and identify that person's contact information with this executed agreement.
3. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.
4. Make periodic site visits during the installation of the EWP project measures to review construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the Sponsor's responsibilities.
5. Upon notification of the completion of the EWP project measures, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement and fund expenditures as agreed have been met.
6. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270 and supporting documentation, withholding the amount of damages sustained by NRCS as provided for in this agreement. In the event there are questions regarding the SF 270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

**SPECIAL PROVISIONS**

- A. The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Emergency Watershed Protection Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS's ability to provide such assistance.
- B. In the event of default of a construction contract awarded pursuant to this agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
- C. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this agreement. NRCS will not be obligated to contribute funds under any agreement or commitment made by the Sponsor without prior concurrence of NRCS.

- D. The State Conservationist may make adjustments in the estimated cost to NRCS set forth in this agreement for constructing the EWP measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change the cost sharing assistance provided by NRCS as set forth in this agreement, nor reduce funds below the amount required to carry out NRCS' share of the contract.
- E. Except for item D. above, this document may be revised as mutually agreed through a written amendment duly executed by authorized officials of all signatory parties to this agreement.
- F. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrence as set out in this agreement.
- G. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement will be de-obligated from the agreement.
- H. If inconsistencies arise between the language in the Statement of Work (SOW) in the agreement and the general terms and conditions, the language in the SOW takes precedence.

#### EXPECTED ACCOMPLISHMENTS AND DELIVERABLES

The following accomplishments and deliverable will be provided to NRCS.

1. One copy of the final engineering plans, specifications signed and sealed by a licensed professional engineer, including engineer's cost estimate, and approved Plan of Operations (if applicable).
2. Signed NRCS-ADS-78 supported by an attorney's opinion.
3. One copy of the quality assurance plan.
4. One copy of the operation and maintenance plan.
5. One copy of the notice of solicitation, bid abstract, and notice of award.
6. Certification that the project was installed in accordance with the plans and specifications.
7. As-built drawings of final construction sign by a licensed professional engineer within 30 days of completion of construction.
8. Quantities of the units of work applied for each site within 30 days of completion of construction.

#### MILESTONES

Milestones shall include, but not limited to, the following items:

1. Pre-construction design conference within 30 days of signing agreement.
2. Submit to NRCS a schedule with time lines of major items to be completed within 14 days of the pre-design conference.
3. Acquire needed real property rights and permits (signed NRCS-ADS-78 supported by an attorney's opinion) prior to start of construction.
4. Obtaining permits.
5. Completing any necessary surveys.

AGREEMENT ID: 800000XXXXX  
SPONSOR: City of Marble Falls  
PROJECT: EWP – Locally Led FA-TA

6. Completing draft engineering plans and specifications for NRCS review.
7. Completing final engineering plans and specifications.
8. Completing quality assurance plan.
9. Solicit bids.
10. Award contract.

**April 21, 2020**

**7. REGULAR AGENDA**

- (d) Discussion and Action regarding a contract for engineering services with Miller Gray, Inc., for engineering design, permitting, and bid phase services for all five sites identified in the Emergency Watershed Protection (EWP) Program Grant. *Kacey Paul, City Engineer*
-



**Council Agenda Item Cover Memo**  
**April 21, 2020**

**Agenda Item No.:** 7(d)  
**Presenter:** Kacey Paul, P.E., City Engineer  
**Department:** Engineering  
**Legal Review:**

**AGENDA CAPTION**

Discussion and Action regarding a contract for engineering services with Miller Gray, Inc., the for engineering design, permitting, and bid phase services for all five sites identified in the Emergency Watershed Protection (EWP) Program grant.

**BACKGROUND**

The City of Marble Falls pursued and was awarded a grant through the USDA NRCS EWP Program in December 2018. From that program, 5 sites that experienced erosion issues from the October 2018 flood event were identified as eligible. Those sites include:

- Avenue N crossing at Backbone Creek
- Avenue J crossing at Backbone Creek
- Raw Water Intake at Lake Marble Falls
- Backbone Creek at Buena Vista
- Backbone Creek at LCRA tower

A Request for Qualifications for engineering services for the 5 EWPP sites was released on January 24 for a period of 21 days. 6 firms responded to the RFQ consisting of:

- Doucet & Associates
- KCI
- LJA Engineering
- Miller Gray LLC
- TRC Companies
- Willis Environmental Engineering

RFQ responses were reviewed and ranked by a City staff review committee consisting of: Kacey Paul, P.E., City Engineer; James Kennedy, Director of Public Works; Jay Everett, Assistant Director of Public Works; Lacey Dingman, Director of Parks and Recreation; and Caleb Kraenzel, Assistant City Manager.

The top two firms were:

1. Miller Gray, Inc.
2. TRC Companies

Based on this City staff negotiated a scope of work and fee with the #1 ranked firm, Miller Gray.

Once the Project Agreement is signed, the City of Marble Falls has 220 days to complete construction.

## RECOMMENDATION

City staff recommends award of the EWPP projects design contract to the top selected firm, Miller Gray Inc.

### **Memo Contents:**

- Professional Services Agreement Pages 3 – 5
- Engineering Scope of Services Pages 4 - 31

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into as of the 21<sup>st</sup> day of April, 2020 by and between the City of Marble Falls ("City") and Miller Gray ("Consultant").

In consideration of the mutual premises, covenants and Agreements herein contained, the parties agree as follows:

Section 1. City hereby engages Consultant, and Consultant hereby accepts such engagement, to provide professional planning and engineering services to the City as specified in Attachment "A" (the "Services"). Consultant shall perform the Services for the benefit of the City upon the terms and conditions contained in this Agreement.

### Section 2. Term and Termination.

(a) Term. The term of Consultant's engagement by City hereunder (the "Term") shall commence on the date of this Agreement and will continue in effect until completion of the Services, unless it is earlier terminated in accordance with this Section. The Services are anticipated to be performed by the Consultant within 3 months from notice to proceed from the City.

(b) Termination. This Agreement may be terminated prior to the end of the Term upon 10 days' notice by either party for any or no reason. Such termination shall be effective 10 days following delivery and receipt, by the terminating party to the other party, of written notice of such termination. The City shall pay Consultant for services rendered and obligations incurred to date of termination and Consultant shall submit to the City all Project documents prepared to that point.

### Section 3. Services.

(a) Scope of Services. The Services shall include those items listed on Attachment A which is incorporated herein by reference for all purposes. In order for the Consultant to perform the Services, the City's obligation for providing information and support is also described in Attachment A. Attachment "A" describes all phases of the Services anticipated to be provided by the Consultant, including the work that will be given notice to proceed under the initial phase of services to be performed by Consultant, and the subsequent work that would be authorized by amendment to this contract.

(b) Performance. The Services, and other duties of Consultant hereunder shall be performed promptly upon request by City, and each phase or task to be performed by Consultant shall commence upon the receipt by Consultant of a written Notice to Proceed. The Consultant shall not undertake any work or portion of a task or phase prior to issuance by the City of a written Notice to Proceed for that task or phase of work. Consultant shall provide to the City, prior to commencing with the work, a task-by-task schedule of the Services to be performed, and will submit monthly updates to the schedule to the City to indicate progress on conducting the Services and adjustments to the work schedule. Engineer shall perform all services under this Agreement to the prevailing engineering professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action.

(c) Additional Services. If Consultant determines that services outside the scope of Attachment "A" ("Additional Services") are required or recommended, or that Consultant is being asked by City to perform services not covered by Attachment "A", Consultant shall notify City that such services are Additional Services, and the cost associated with their performance and receive approval to perform such Additional Services prior to undertaking them. Additional Services shall be performed at the professional rates listed in Attachment "B", or for a lump sum amount as agreed between the parties.

(d) Consultant Responsibility. Acceptance and approval of the work performed by Consultant or acceptance and approval of any report, document, or computer program by the City shall not constitute nor be deemed a release of the responsibilities and liability of Consultant for the accuracy and competency of Consultant's work products, computer programs, or other documents, and services prepared/performed under this Agreement. No

approvals or acceptances by or in behalf of the City shall be deemed to be an assumption of such responsibility by the City for any defect, error or omission in said work products, computer programs or other documents and services as prepared/performed by Consultant.

Consultant further agrees to correct documents or re-execute services as may be required when such documents or services required to be produced under this Agreement are found to be in error or contain defects or omissions at no additional costs to the City.

### Section 4. Compensation.

(a) Fee. In exchange for Consultant ongoing performance of the initial phase of Services associated with Attachment "A" and the other duties and obligations under this Agreement, City shall pay to Consultant a fee (the "Fee") not to exceed \$ 339,822. The Fee shall be the sole compensation due Consultant in connection with its rendition of the Services identified in Attachment "A". Payments to Consultant will be made by City from invoices submitted by the Consultant and shall be based on the percentage of the work performed by Consultant on the Project as of the date of the invoice. Invoices shall itemize the services performed between Base Services, Additional Services and expenses, as applicable. Invoices shall not be submitted more frequently than one time per month. Invoices are due and payable thirty (30) days after receipt by the City.

The Fee is to be paid on a not to exceed basis, in accordance with the schedule of values included in Attachment "B", to include any and all expenses that may be incurred by Consultant in the performance of the Services associated with this Agreement. City shall not be obligated to reimburse Consultant for any additional expenses incurred by Consultant in connection with Consultant's performance of such Services except in accordance with Section 3c of this contract. Subsequent amendments to this Contract may be executed by the City to authorize additional fees for the Consultant to provide the remainder of the Services in Attachment "A" that are not included in the initial Notice to Proceed, the schedule of value for which is shown in Attachment "C".

(b) Taxes. Consultant, and not City, shall be solely responsible for paying all required federal, state and local taxes related to any amounts received by Consultant pursuant to this Agreement. City shall not withhold OASDI, Medicare or any federal, state or local income or other tax, make unemployment insurance contributions or obtain workers' compensation insurance on behalf of Consultant.

(c) Payments on account of Consultant's Services shall be made to Consultant at its billing address indicated on the invoice, 30 days after invoice is received and approved for payment. Invoices for payment of Services shall not be submitted to City more frequently than once per month. Billing shall include documentation of cost of Services rendered during the previous month. Interest shall accrue on undisputed amounts which have not been and are past due, in accordance with the provisions of Section 2251.021 of the Texas Government Code, unless delay in payment is due to the fault of Consultant.

Section 5. Independent Contractor. Consultant shall at all times be an independent Consultant and nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, partnership or joint venture as between Consultant and City. Consultant shall have the entire charge, control and supervision of its performance of the Services. Consultant will not have any authority to incur any obligation or bind or commit City to any Agreement, contract, or commitment or to waive, modify, or amend any rights of City under any Agreement, contract, or commitment, except as expressly authorized in writing by City. City shall not in any manner be answerable or accountable for: (i) any violation by Consultant of any federal, state or local laws, regulations, ordinances, rules or orders; or (ii) for any injury, loss or damage arising from or out of any act or omission of Consultant.

Section 6. Governing Law. This Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws provisions. Venue and performance of this Agreement shall be in Burnet County Texas.

Section 7. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto; provided, however, that Consultant may not subcontract or assign this Agreement without the prior approval of City.

Section 8. Severability and Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto. No failure or delay by either the City or Consultant in enforcing any provision of this Agreement shall operate as a waiver.

Section 9. Limitation of Damages. UNDER NO CIRCUMSTANCES WILL CITY BE LIABLE TO CONSULTANT OR CONSULTANT BE LIABLE TO CITY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES.

Section 10. Compliance with Law. Consultant agrees that it shall at all times fully comply with all laws, statutes, ordinances, rules, regulations and orders applicable to the Services or this Agreement.

Section 11 Insurance. Consultant agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement.

(a) Workers' Compensation and Employers' Liability coverage for employees of Consultant, if any, with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 *et seq.* Tex. Rev. Civ. Stat.) and minimum policy limits for Employers Liability of \$100,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee.

(b) Commercial General Liability with a minimum combined bodily injury and property damages per occurrence with a limit of \$500,000 for coverages A & B. The policy shall contain the following provisions:

1. Blanket contractual liability coverage for liability assumed under the Agreement and for all subcontracts.
2. City listed as an additional insured, endorsement CG 2010 or its equivalent.
3. Thirty (30) day Notice of Cancellation in favor of the City, endorsement CG 0205 or its equivalent.
4. Waiver of Transfer of Rights of Recovery Against Others in favor of the City, endorsement CG 2404 or its equivalent.

(c) Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of City:

1. Waiver of Subrogation endorsement TE 2046A or its equivalent.
2. Thirty (30)-day Notice of Cancellation, endorsement TE 0202A or its equivalent.
3. Additional Insured, endorsement TE 9901B or its equivalent.

(d) Professional Liability – each claim made \$1,000,000

Section 12 Indemnity.

Consultant hereby expressly agrees to indemnify and hold harmless the City and the City's officers, agents and employees, from and against all expenses, claims, demands, costs, and causes of action, including reasonable attorney's fees for the defense of all claims and demands (collectively, "Costs"), to the extent directly caused by the negligent performance of Services in connection with this Agreement by Consultant, its officers, agents, employees and parties with whom it contracts, including Sub-Consultants, and from all Costs in

connection with injury or property damages to the extent directly caused by the negligent performance of Services under this Agreement by Consultant, its employees, agents, representatives and parties with whom it contracts, including Sub-Consultants.

Section 13 Confidentiality.

Consultant covenants and agrees that it shall not, at any time, directly or indirectly, divulge or disclose for any purpose whatsoever, confidential and proprietary information concerning the City that has been developed by the City, or obtained by Consultant from the City or disclosed to the Consultant by the City, as a result of the performance of the Consultant's work, duties and obligations under this Agreement. The parties stipulate that, as between them, the aforementioned matters are important, material, and confidential and gravely affect the effective and successful conduct of the business of the City and its goodwill, and that any breach of the terms of this section is a material breach of this Agreement. The parties further stipulate that no adequate remedy at law exists for a violation of this Section by Consultant and that therefore the City shall be entitled to injunctive relief against Consultant for such a violation. "Confidential and proprietary information" of the City shall include, but not be limited to, costs and pricing financial and technical information, ideas, designs, specifications, techniques, models, data, programs, documentation, processes, know-how, customer lists, marketing plans, and information discussed at any meetings in which the City is present. "Confidential Information" shall also include any individually identifiable information of Participants.

It is agreed that the provisions of this Section 13 shall be applicable and enforceable unless the terms and conditions of this Section 13 are expressly waived on behalf of the City and reduced to an instrument in writing signed by the City.

Section 14. Ownership and Use of Documents

Consultant agrees that items such as plans, drawings, photos, designs, studies, specifications, data, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the City, is/are subject to the rights of the City in effect on the date of execution of this Agreement. Subject to the last sentence in this section, these rights include the right to use, duplicate and disclose such items, in whole or in part, in any manner and for whatever purpose; and, to have others do so. If an item produced by Consultant is copyrightable, Consultant may copyright it, subject to the rights of the City. The City reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. Any reuse or modification of any item by the City shall be at the City's sole risk and without liability or legal exposure to Consultant. Consultant shall mark all confidential or proprietary information as such prior to furnishing it to the City. Notwithstanding anything to the contrary contained herein, the City agrees that all rights and licenses afforded to the City in this section are limited to the use by the City exclusively for the City and not commercially or with an intent to profit from such information, and the City agrees to keep such information confidential from all parties not directly involved in the permitted use of such information unless required to release the information pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code.

Section 15. Notice

Invoices and working documents may be hand delivered or sent by regular first class United States mail. Working documents, progress reports, computer documents, computer files, or computer software may be sent through electronic mail (e-mail). Except for the information and/or documents specified above, any notice required to be given pursuant to this Agreement shall be in writing and shall be either delivered personally to the party to be notified, or sent by registered or certified mail, first class postage prepaid, return receipt requested, addressed to the party to be notified at such party's address:

Miller Gray:

Miller Gray  
P.O. Box 303130  
Austin, Texas 78703  
Attn: Dale Gray

Marble Falls:

City of Marble Falls, Texas  
800 Third Street  
Marble Falls, Texas 78654  
Attn: Kacey Paul

Section 16. Entire Agreement. This Agreement embodies the entire Agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous Agreements and understandings, oral or written, relating to said subject matter. This Agreement may not be amended or modified in any manner except by a written Agreement signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

**CITY OF MARBLE FALLS:**

By: \_\_\_\_\_  
Mike Hodge, P.E., City Manager

**CONSULTANT:**

By:  \_\_\_\_\_  
Rachel Gray, President/CEO



April 15, 2020

Kacey Paul, P.E., CFM, City Engineer  
City of Marble Falls  
1808 Second Street  
Marble Falls, Texas 78654

*Delivered via email kpaul@marblefallstx.gov*

**Re: Proposal for Professional Engineering Services for City of Marble Falls NRCS  
Emergency Watershed Protection Program (EWPP)**

Dear Ms. Paul,

Miller Gray ("MG") is pleased to present this proposal to the City of Marble Falls ("Client") to provide professional engineering services for the NRCS Emergency Watershed Protection Program (EWPP) funded stream erosion, bank stabilization, and restoration projects.

This proposal includes a scope of work, subconsultant services, technical standards & design criteria, special conditions, and a fee summary. The tasks to complete this work are described below.

**BACKGROUND**

The project involves engineering services for five (5) stream erosion stabilization and restoration sites, including project management, quality assurance / quality control & constructability reviews, preliminary and final design plans, contract documents, permitting, and bid assistance required by the City of Marble Falls for the implementation of the USDA Natural Resources Conservation Service (NRCS) National Emergency Watershed Protection Program (EWPP) funding.

The 5 sites include:

1. Backbone Creek at the Avenue N crossing.
2. Raw water intake structure along Lake Marble Falls.
3. LCRA transmission tower at the confluence of Backbone Creek and Lake Marble Falls.
4. Backbone Creek bank at Johnson Park.
5. Backbone Creek bank along Buena Vista Drive.

Exhibits for the 5 sites are attached for reference.

All sites are located within the FEMA Special Flood Hazard Area (1% Annual Chance Exceedance – Zone AE) and possibly the Regulatory Floodway according to the FEMA National Flood Insurance Program (NFIP) Flood Insurance Rate Map (FIRM), Map Nos. 48053C0583G and 48053C0584G, dated November 1, 2019.

## **SCOPE OF WORK**

### **Task 1.0 Project Management**

Miller Gray will be the managing representative of the design team and will directly coordinate with the City Engineer (Kacey Paul). Miller Gray will also internally manage the subconsultants and provide a single point of contact.

- 1.1 Project pre-design meeting – The City will host a pre-design meeting including the NRCS representative, Miller Gray, and selected subconsultants. Miller Gray will prepare an agenda and distribute minutes of the meeting.
- 1.2 Project progress meetings – Miller Gray and those subconsultants necessary will attend project progress meetings monthly with the City Engineer for the duration of design. In addition, weekly or bi-weekly conference calls will be held to ensure continual communication. Miller Gray will prepare an agenda and distribute meeting minutes of project progress meetings and send an email summary after the conference calls.
- 1.3 Project progress reports – Miller Gray will prepare monthly project progress reports including work accomplished to date, work anticipated during the next period, and budget and schedule updates.
- 1.4 Site Visits – Miller Gray and applicable subconsultants will visit the project sites and document field conditions and discuss design concepts with City staff.

*Deliverables:*

- *Minutes and action items for each meeting.*
- *Project progress reports.*
- *Photo documentation of each site.*

### **Task 2.0 Quality Assurance / Quality Control – Constructability**

Miller Gray and its subconsultants will provide QA /QC-C in accordance with Miller Gray's internal policy and applicable NRCS requirements. All formal work products including formal communications (excluding emails, transmittal forms, etc.), reports, calculations, design plans, contract documents, technical specifications, cost estimates, and other deliverables will undergo independent review to ensure completeness and accuracy.

- 2.1 Miller Gray will prepare a Quality Assurance Plan (QAP) for design and construction phase in accordance with the NRCS EWPP guidelines.
- 2.2 The project will be submitted for QC review at each major submittal (preliminary 30%, draft 80% and final 100% Invitation for Bid 'IFB').
- 2.3 Subconsultants work will be reviewed internally for consistency and conformance to the project goals and design.

*Deliverables:*

- *One (1) electronic copy of the Quality Assurance Plan in PDF format for NRCS.*
- *Approved QC form for each submittal for the City and NRCS records.*

### **Task 3.0 Preliminary Engineering**

- 3.1 Data collection – using the conceptual exhibits, Miller Gray and it's subconsultants will obtain data of existing and proposed environmental and soil conditions, utilities, and other improvements. Miller Gray will obtain existing reports and designs, existing hydrology and hydraulic models from FEMA / Burnet County, and existing LCRA projects.
- 3.2 Environmental Assessment & Permitting – Hicks & Co., Inc. will provide delineation of Waters of the US (WOTUS), investigation of the potential occurrence of threatened or endangered species, investigation of potential adverse effects to cultural resources and other areas required by NRCS, and identify other environmental permitting requirements in accordance with their attached proposal. Hicks & Co. will prepare the USACE Nationwide Permit Preconstruction Notification (PCN) with Miller Gray providing design plans, schematics and estimates of disturbance and fill within the jurisdictional waters of the US.
- 3.4 Surveys – Cuplin & Associates will provide boundary, topographic, bathymetric, and tree surveys as described in their proposal to the City of Marble Falls. ***The surveyor will contract directly with the City.***
- 3.5 Geotechnical Investigations (GDR) – Holt Engineering, Inc. will provide soil borings and sampling, and geotechnical investigations in accordance with their attached proposal.
- 3.6 Geotechnical Design Memorandum (GDM) – Freese & Nichols, Inc. will provide a geotechnical design memorandum including developing engineering properties for slope stability analysis at Sites #3, #4 and #5, and soil properties for soil nail wall design at Site #5.
- 3.6 Hydraulic Analysis & Preliminary Design – The information gathered in the previous subtasks will be used to prepare base maps with environmental constraints, topographic and geotechnical soil information. Miller Gray along with Freese & Nichols will evaluate erosion and bank stabilization measures and develop preliminary design drawings. A preliminary engineering technical memorandum discussing the proposed improvements to be designed. Hydraulic modeling and scour analysis will be based on existing FEMA floodplain models.
- 3.7 Prepare 30% Plans – Preliminary plans showing the location of proposed improvements (1"=20' scale or appropriate), identify potential temporary and permanent easement locations, and potential contractor storage and staging areas.
- 3.8 Prepare 30% OPCC – Miller Gray will prepare an Opinion of Probable Construction Cost (OPCC) for all five stabilization sites with appropriate design and construction contingencies.
- 3.9 NRCS Coordination – In supporting and as directed by City staff, review proposed improvements and estimated costs with NRCS staff. MG will document the meeting and provide meeting minutes.

*Deliverables:*

- *One (1) electronic copy of the Technical Memorandum in PDF format.*
- *One (1) electronic copy of the 30% plans and OPCC in PDF format.*
- *One (1) electronic copy all geotechnical reports, environmental assessments (incl. USACE NWP PCN), and coordination letters to the Texas Historical Commission/USFWS in PDF format.*

#### **Task 4.0 Final Design & Construction Documents**

- 4.1 Final Design – Miller Gray will provide final design of erosion stabilization at all five sites, including final scour analysis, rock rip-rap sizing and final soil blanket determinations. Freese & Nichols will provide final geotechnical engineering analysis, including stability analyses, and structural design of the sheet pile walls, concrete caps, and soil wall nail system in accordance with their attached proposal.
- 4.2 Prepare 80% Plans – Miller Gray will provide plans including, cover sheet, general notes, ESC plans, plan & profiles of stabilization at all 5 sites, temporary traffic control plans, and various detail sheets. The plans will be prepared on 22" x 34" sheets that are provided half-scale on 11" x 17" sheets. Freese & Nichols will provide structural design plans, details and sections to be included in the plan set.
- 4.3 Prepare 80% Project Manual – Prepare a project manual with bidder's information, contract documents, technical specifications, special specifications, and special provisions (if nec.). Contract documents will be based on City of Marble Falls standard contract documents, supplemented as necessary with NRCS requirements.
- 4.4 Prepare 80% OPCC – Revise the OPCC for all five stabilization sites with appropriate design and construction contingencies.
- 4.5 Prepare 100% (IFB) Plans – Address City and NRCS comments on 80% plans and prepare an Invitation of Bid ready construction document plan set.
- 4.6 Prepare 100% (IFB) Project Manual – Address City and NRCS comments on 80% project manual and prepare an Invitation of Bid ready project manual complete with invitation to bid, bidder's instructions, bid form, contract documents, and technical specifications.
- 4.7 Prepare 100% (IFB) OPCC – Prepare an engineer's final OPCC with only construction contingency.
- 4.8 Stormwater Pollution Prevention Plan (SWPPP) – Develop a SWPP for compliance with the rules administered by the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollution Discharge Elimination System (TPDES). The document will be made available to the selected contractor; however, the contractor will be responsible to maintain compliance and file appropriate NOI's and NOT's.
- 4.9 Permitting (NRCS, LCRA)
  - NRCS – Obtain NRCS review and concurrence on the final plans and specifications prior to proceeding with bidding and construction of identified streambank stabilization projects. MG will also review estimated costs of proposed improvements and support the City in pursuing NRCS contract modification if necessary.
  - LCRA – Prepare and process a LCRA Dredge and Fill Permit for improvements impacting more than 500 linear feet of streambank.

*Deliverables:*

- One (1) electronic copy of the plans, project manual, and OPCC at the 80% complete stage in PDF format.
- Three (3) printed copies of 11" x 17" (half-size) plans sets and project manuals at the 80% complete stage.

- One (1) electronic copy of the plans, project manual, and OPCC for Invitation for Bid (IFB) in PDF format.
- One (1) printed copy of 22" x 34" (full size) plan set and three (3) printed copies of 11" x 17" (half-size) plans sets and project manuals at the IFB complete stage.
- One (1) electronic copy of the LCRA Dredge & Fill Permit
- Copies of all comment response letters to review comments provided by the City of Marble falls, NRCS, and LCRA.

### **Task 5.0 Bid Assistance**

5.1 Pre-bid Conference – MG and its selected subconsultants will attend the pre-bid conference and discuss items unique to this project with contractors in attendance.

5.2 Bid Assistance & Addenda – MG and its selected subconsultants will interpret drawings and technical specifications, and respond directly to bidder's questions when directed to do so by the City. If necessary, prepare addenda for the City's approval and distribution. The budget is based on preparing one (1) addenda of reasonable length.

5.3 Bid Tabulation & Recommendation – MG will tabulate all bids received, review for inconsistencies or potential unbalanced bids, and provide a recommendation to the City for award.

#### *Deliverables:*

- Pre-bid conference agenda.
- Addenda for the City's distribution.
- One (1) electronic copy of the bid tabulation and recommendation for award letter.

### **SUBCONSULTANT SERVICES**

The nature of this project requires professional or consulting services from outside subconsultants. MG has included the following subconsultants under our contract to simplify the design and permitting process. Anticipated subconsultants are as follows:

Geotechnical Services (Holt Engineering, Inc.) – See attached proposal for scope and fee.

Environmental Services (Hicks & Company) – See attached proposal for scope and fee.

Geotechnical & Structural Engineering Services (Freese & Nichols, Inc.) – See attached proposal for scope and fee.

### **SPECIAL CONDITIONS**

In preparing this proposal, MG has made the following assumptions:

1. Client will provide a current boundary, topographic, and tree survey meeting the requirements of the City of Marble Falls in electronic CAD form for MG's use.

2. The existing structures along Buena Vista Drive are demolished and removed prior to commencing these services.
3. MG's attendance at public hearings, meetings, or presentations other than described above is not required.
4. Governmental and quasi-governmental agency review fees and fees associated with permitting, review and approval of this development will be paid directly by the Client.
5. Client will advertise the project for bid or identify potential bidders, print & distribute plan sets and project manuals, maintain a plan holders list, and conduct the pre-bid meeting.

The following items are not included in this proposal:

6. Preparation of easement dedication documents or other legal services.
7. Individual Permit for impacts to Waters of the US under Section 404 or FEMA permitting services (CLOMR, LOMR, etc.)
8. Phase 1 or 2 environmental studies or Geological studies.
9. Other professional services: Land Surveying, Architectural, Landscape Architectural, MEP, or Licensed Irrigator.
10. Obtaining building permits or certificates of occupancy.
11. Governmental review fees.
12. Services to resolve bid protests or rebid the project.
13. Construction management, observation or other construction phase services are not included in this contract; however, they may be added as an additional service at a later date.

The preceding items may be provided under a separate Additional Service Request, if found to be necessary or are requested by the Client.

## FEE SUMMARY

The scope of services will be provided for the **fee amount of \$339,822** summarized below and shown on the attached Fee Estimate. Fees for the above services will be invoiced monthly on a **lump sum basis** (percent complete) for the services performed that month.

<b>Firm</b>	<b>Fee Amount</b>	<b>Fee Type</b>
Miller Gray LLC	\$121,870	Lump Sum
Freese & Nichols, Inc.	\$163,353	Lump Sum
Holt Engineering, Inc.	\$28,021	Lump Sum
Hicks & Company	\$26,578	Lump Sum
<b>Total Fee</b>	<b>\$339,822</b>	

Any additional or out-of-scope services will be provided on an hourly basis according to the attached Standard Billing Rates or be described and authorized in an Additional Services Request. The Client will be notified prior to the initiation of any such services and no additional services will be performed without the prior written approval from the Client.

Ms. Kacey Paul, P.E., CFM  
Proposal for Professional Engineering Services for City of Marble Falls  
NRCS Emergency Watershed Protection Program (EWPP)

Page 7 of 7  
April 15, 2020

Miller Gray thanks you for this opportunity to provide this proposal and we look forward to working with you on this project. If you have any questions, please call us at (512) 861-5300 or email Dale Gray, P.E. at dale.gray@miller-gray.com.

Sincerely,

**MillerGRAY**

TBPE Firm Reg. No. F-16302



Rachel Gray, MA  
President/CEO

Attachments

Cc: Dale Gray, P.E., *Principal* – Miller Gray LLC  
Travis Wilson, P.E., CFM, *Principal* – Miller Gray LLC  
Sam Shorter, P.E., *Sr. Project Manager* – Miller Gray LLC

City of Marble Falls  
Engineering Services for NRCS Emergency Watershed Protection Program (EWPP)  
**FEE ESTIMATE**  
April 15, 2020



Task No.	Task or Work Product Description	Principal	Sr. Project Manager / Engineer	Project Manager / Engineer	Engineering Staff (EIT)	Sr. CAD Designer	CAD Designer	CAD Technician	Administrative	Miller Gray Subtotal	Subconsultant	Subconsultant Markup	Total Task Cost
		\$180	\$150	\$125	\$100	\$110	\$95	\$85	\$75			0%	
<b>1.0 Project Management</b>													
1.1	Pre-design Meeting with CoMF & NRCS (incl. FNI Task 1.1)	1	2	4	2					\$ 1,180	\$ 2,160	\$ -	\$ 3,340
1.2	Project Progress Meetings	1	2	4	4					\$ 1,380	\$ -	\$ -	\$ 1,380
1.3	Project Progress Reports		2	8						\$ 1,300	\$ -	\$ -	\$ 1,300
1.4	Site Visit (incl. FNI Task 1.3)		2	2	8					\$ 1,350	\$ 2,644	\$ -	\$ 3,994
1.5	Subconsultant Project Management Process (FNI Task 1.2)									\$ -	\$ 7,777	\$ -	\$ 7,777
<b>Task 1.0 Subtotal</b>		<b>2</b>	<b>8</b>	<b>18</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 5,210</b>	<b>\$ 12,581</b>	<b>\$ -</b>	<b>\$ 17,791</b>
<b>2.0 Quality Assurance / Quality Control - Constructability (QA/QC-C)</b>													
2.1	Quality Assurance Plan	4	2							\$ 1,020	\$ -	\$ -	\$ 1,020
2.2	QC Reviews - Preliminary (30%), Draft (80%) and Final (100% IFB) Submittals	16	6							\$ 3,780	\$ -	\$ -	\$ 3,780
<b>Task 2.0 Subtotal</b>		<b>20</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 4,800</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,800</b>
<b>3.0 Preliminary Engineering (30%)</b>													
3.1	Data Collection		1	2	12					\$ 1,600	\$ -	\$ -	\$ 1,600
3.2	Environmental Assessments & Permitting (Hicks Tasks 1-5 & 7)		1	1	4	4				\$ 1,115	\$ 25,821	\$ -	\$ 26,936
3.3	Surveys, Boundary/ROW/Topographic/Bathymetric/Tree (Provided by City)		1	2	8	2	12			\$ 2,560	\$ -	\$ -	\$ 2,560
3.4	Geotechnical Investigation, GDR (Holt Tasks 1-5)		1	1	2		2			\$ 665	\$ 28,021	\$ -	\$ 28,686
3.5	Geotechnical Design Memorandum (FNI Task 2)									\$ -	\$ 14,585	\$ -	\$ 14,585
3.6	Hydraulic Analysis & Preliminary Design	2	2	16	60					\$ 8,660	\$ -	\$ -	\$ 8,660
3.7	Prepare 30% Plans	1	2	8	40	8	80			\$ 13,960	\$ -	\$ -	\$ 13,960
3.8	Prepare 30% OPCC	1	2	16			8			\$ 3,240	\$ -	\$ -	\$ 3,240
3.9	NRCS Coordination	1	2	4						\$ 980	\$ -	\$ -	\$ 980
<b>Task 3.0 Subtotal</b>		<b>5</b>	<b>12</b>	<b>50</b>	<b>126</b>	<b>14</b>	<b>102</b>	<b>0</b>	<b>0</b>	<b>\$ 32,780</b>	<b>\$ 68,427</b>	<b>\$ -</b>	<b>\$ 101,207</b>
<b>4.0 Final Design &amp; Construction Documents (80% Draft, 100% IFB)</b>													
4.1	Final Design (incl. FNI Task 3)	2	8	16	60					\$ 9,560	\$ 89,477	\$ -	\$ 99,037
4.2	Prepare 80% Plans (incl. FNI Tasks 4.1, 4.4 & 4.5)	1	4	12	60	16	120			\$ 21,440	\$ 23,214	\$ -	\$ 44,654
4.3	Prepare 80% Project Manual (incl. FNI Task 4.2)	1	8	16	60					\$ 9,380	\$ 5,746	\$ -	\$ 15,126
4.4	Prepare 80% OPCC (incl. FNI Task 4.3)	1	2	16			8			\$ 3,240	\$ 968	\$ -	\$ 4,208
4.5	Prepare 100% (IFB) Plans (incl. FNI Task 4.6)	1	4	8	40	8	80			\$ 14,260	\$ 6,352	\$ -	\$ 20,612
4.6	Prepare 100% (IFB) Project Manual (incl. FNI Task 4.7)	1	4	12	40					\$ 6,280	\$ 1,962	\$ -	\$ 8,242
4.7	Prepare 100% OPCC	1	2	12			8			\$ 2,740	\$ -	\$ -	\$ 2,740
4.8	Stormwater Pollution Prevention Plan			2	24		2			\$ 2,840	\$ -	\$ -	\$ 2,840
4.9	Other Permitting (CoMF, LCRA)(incl. Hicks Task 6)	1	12	24						\$ 4,980	\$ 758	\$ -	\$ 5,738
<b>Task 4.0 Subtotal</b>		<b>9</b>	<b>44</b>	<b>118</b>	<b>284</b>	<b>24</b>	<b>218</b>	<b>0</b>	<b>0</b>	<b>\$ 74,720</b>	<b>\$ 128,477</b>	<b>\$ -</b>	<b>\$ 203,197</b>
<b>5.0 Bid Assistance</b>													
5.1	Pre-bid Conference		2	4						\$ 800	\$ 1,352	\$ -	\$ 2,152
5.2	Bid Assistance & Addenda	1	4	14			4			\$ 2,910	\$ 7,116	\$ -	\$ 10,026
5.3	Bid Tabulation & Recommendation		1	4						\$ 650	\$ -	\$ -	\$ 650
<b>Task 5.0 Subtotal</b>		<b>1</b>	<b>7</b>	<b>22</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>\$ 4,360</b>	<b>\$ 8,468</b>	<b>\$ -</b>	<b>\$ 12,828</b>
<b>TOTAL FEE - BASE SERVICES (incl. Expenses)</b>		<b>37</b>	<b>79</b>	<b>208</b>	<b>424</b>	<b>38</b>	<b>324</b>	<b>0</b>	<b>0</b>	<b>\$ 121,870</b>	<b>\$ 217,952</b>	<b>\$ -</b>	<b>\$ 339,822</b>



## STANDARD BILLING RATES

### Standard Hourly Rates

Principal/Sr. Engineer	\$150 - \$180
Project Manager/Engineer	\$105 - \$145
Engineering Staff (EIT)	\$90 - \$110
Sr. CAD Designer	\$95 - \$120
CAD Designer	\$85 - \$100
CAD Technician	\$75 - \$95
Administrative	\$50 - \$85

### Reimbursables/Reproductions

Miscellaneous expenses including printing, courier, etc. will be invoiced at cost to MG plus a 10% administrative and handling charge. Mileage will be invoiced at the federal standard mileage rate for the current period.

### Subconsultants

All subconsultant services will be invoiced at cost to MG plus a 10% management, administrative and handling charge.

### Annual Increase

Due to the short duration of this project, an annual increase in rates is NOT anticipated.

## SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

### PROJECT UNDERSTANDING

Miller-Gray (Client) is assisting the City of Marble Falls (City) with engineering services for stream erosion stabilization and restoration projects. Services include engineering analysis, preliminary and final design plans, permitting, construction and bid documents. Interim and final construction inspections are not included but may be added as an additional service. The City has secured USDA Natural Resources Conservation Service (NRCS) National Emergency Watershed Protection Program (EWPP) funding for project implementation. Funding for five (5) sites have been approved for design and construction (attachment 1).

FNI will perform design services related to three of the five sites. FNI is to perform the following scope of basic services to address bank erosion and damage to restore the riverbank at sites #3, 4, and 5 with a sheet pile wall. The bank stabilization of Site #3, #4, and #5 will consist of approximately 1,740 linear feet (Figure 1). FNI will also provide peer review and geotechnical analysis services to Client on Site #1 and #2. FNI will prepare structural technical specifications and structural drawings for Sites 3, 4, and 5 to secure a qualified construction contractor for implementation. NRCS will perform a cursory review of the construction documents for general compliance with the terms of the grant agreement.

### ARTICLE I

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project:

- A. **PROJECT MANAGEMENT:** FNI shall provide professional services in this phase as follows:
1. Establish a schedule, coordinate information between FNI and Client, and other efforts in support of this project. Coordinate Quality Control (QC)/Quality Assurance (QA) by Senior Management and Technical Staff consistent with FNI's established internal quality review processes. Coordinate conference calls and project updates as necessary for the project as the project progresses.
  2. Participate in a kickoff meeting led by Client to establish project schedule, USACE permit strategy, and overall project coordination.
  3. Perform one (1) site visit to become familiar with the project sites and the current state of the damaged bank.
- B. **GEOTECHNICAL INVESTIGATION:** FNI shall provide professional services in this phase as follows:
1. Assist in the development of field investigation plan detailing soil boring locations with soil sampling plan and laboratory testing program to allow the development of appropriate soil index and engineering properties to be used in the design. The plan will be provided to the City to secure services from Holt Engineering to perform the geotechnical investigation.
  2. Review geotechnical data report provided by the City documenting the geotechnical investigation and testing results. Provide comments for edits and revisions by the City, if deemed appropriate.

3. Develop soil index and engineering properties for use in slope stability analysis for Sites 3, 4, and 5 for design of the sheet pile walls at Sites 3, 4, and 5. In addition, develop soil parameters for soil nail wall design for upper bank at Site 5.
  4. Prepare brief geotechnical design memorandum (draft) to include geotechnical strength parameters for the project. Draft geotechnical design memorandum will be issued in electronic (.pdf) format.
  5. Address Client comments and prepare final report addressing review comments. Provide copies in Electronic form (PDF format).
- C. DESIGN PHASE-SITE 3, SITE 4, SITE 5: FNI shall provide professional services in this phase as follows:
1. Review Client provided H&H models and data.
  2. Prepare design criteria including load cases and associated factors of safety. Include references to codes, standards, guidance, and best practices.
  3. Perform engineering analysis of the identified riverbank stabilization including:
    - a. Global slope stability analysis (at the end of construction, long term with drained soil condition, and river rapid drawn down with saturated soil condition)
    - b. Shallow slope failure
    - c. Sheet pile stability
    - d. Soil nail wall stability
  4. Coordinate with Client on the Site #5 upper retaining wall and lower sheet pile design.
  5. Perform a sheet pile drivability study and provide recommendations for sheet pile installation equipment and procedure.
  6. Perform structural analysis of the identified riverbank stabilization including:
    - e. Concrete cap
    - f. Sheet pile design
    - g. Soil-Nail (anchor) Tie-back design
    - h. Tie-ins to existing sheet pile
  7. Prepare the technical memorandum documenting structural and geotechnical design for Site 3, Site 4, and 5. Provide submittal to Client for review at the 90% level.
  8. Address Client comments on the draft technical memorandum and submit a final technical memorandum.
- D. CONSTRUCTION DOCUMENTS: FNI shall provide professional services in this phase as follows:
1. Prepare concept level figures of typical sections to Miller-Gray for development of site civil drawings.

2. Prepare structural drawings, structural technical specifications, designs, and layouts of the bank stabilization measures at Sites 3, 4, and 5. The technical specifications provided will be the following:
    - a. Division 03 - Concrete Reinforcement, Concrete Forming, Cast-in-Place Concrete
    - b. Division 31 - Sheet pile specification, Soil Nail wall specification
  3. Provide design submittals at 80% and IFB level design milestones.
  4. Conduct review meeting (in-person) to discuss Miller-Gray comments regarding the 60% and 90% construction documents. Revise contract documents to address comments. Client comments are to include comments by City and NRCS, if any.
  5. Provide input for unit prices related to the sheetpile wall, concrete cap, and soil nail wall.
  6. Furnish Client one (1) electronic copy (.pdf format) of drawings, specifications, and bid proposals marked for approval by Client, for the 80% submittal as described above. Upon final approval by Client, FNI will provide one (1) set of reproducible IFB drawings.
- E. **BID OR NEGOTIATION PHASE:** Upon completion of the design services and approval of IFB drawings and specifications by Client, FNI shall provide professional services in this phase as follows:
1. Assist Client by responding to questions and interpreting bid documents. Assist with information to issue up to two (2) addenda to the bid documents to plan holders if necessary. At Client request, assist with review of the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project.
  2. Participate in a pre-bid conference for the construction projects and coordinate responses with Client. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.

## ARTICLE II

**SPECIAL SERVICES:** FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

1. None

## ARTICLE III

**ADDITIONAL SERVICES:** Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services to be performed by FNI, if authorized by Client, are described as follows:

1. Design services related to Site 1 and Site 2.
2. Site civil drawings including but not limited to plan views, profile views, and sectional views.

3. Bidder's proposal items (project quantities) of the improvements to be constructed at Sites 3, 4, and 5.
4. Hydrology and Hydraulics or Geomorphologic assessment and design of the site.
5. Construction Phase Services
6. Field layouts or the furnishing of construction line and grade surveys.
7. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
8. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Client.
9. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Client or 2) due to other causes not solely within the control of FNI.
10. Preparing data and reports for assistance to Client in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
11. Assisting Client in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
12. Assisting Client in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
13. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
14. Services required to resolve bid protests or to rebid the projects for any reason.
15. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
16. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
17. Providing Geotechnical field investigations.

18. Providing Landscape architectural services.
19. Cultural resource surveys including archeological surveys or historical documentations
20. Preparation of Section 404 Individual Permit or Letter of Permission.
21. Preparation of a mitigation plan.
22. Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.

#### ARTICLE IV

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in three months days from Notice to Proceed.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust the contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

#### ARTICLE V

**RESPONSIBILITIES OF CLIENT:** Client shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs.
- B. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project. Client's representative will serve as project manager and will coordinate all communications and direct actions for the team with the City's team and NCRS' staff.
- C. Provide all criteria and full information as to Client'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 Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- H. Client shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Client shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Client.
- I. Client shall perform all the required hydrologic and hydraulic modeling for the project to provide hydrostatic and hydrodynamic loading for the bank stabilization design.
- J. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- K. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- L. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any other Consultants and Contractor.
- M. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- N. Bear all costs incident to compliance with the requirements of this Article V.

**ARTICLE VI**

**DESIGNATED REPRESENTATIVES:** FNI and Client designate the following representatives:

Client's Designated Representative:

Dale Gray, P.E.  
P.O. Box 303130  
7320 N Mopac Expy, Suite 203  
Austin, Texas 78731  
(512) 861-5300

[dale.gray@miller-gray.com](mailto:dale.gray@miller-gray.com)

Owner's Accounting Representative:

Heidi Petmecky  
P.O. Box 303130  
7320 N Mopac Expy, Suite 203  
Austin, Texas 78731  
(512) 861-5300  
[heidi.petmecky@miller-gray.com](mailto:heidi.petmecky@miller-gray.com)

FNI's Designated Representative:

Layne Bukhair, P.E.  
10431 Morado Circle, Suite 300  
Austin, Texas 78759  
(512) 617-3184  
[LLB@freese.com](mailto:LLB@freese.com)

FNI's Accounting Representative:

Billy Metzger  
10431 Morado Circle, Suite 300  
Austin, Texas 78759  
(512) 617-3101  
[Billy.Metzger@freese.com](mailto:Billy.Metzger@freese.com)

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GEOTECHNICAL ENGINEERING  
DRILLING & SAMPLING  
FOUNDATION DESIGN

# HOLT

ENGINEERING, INC.

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CONSTRUCTION INSPECTION  
LABORATORY TESTING  
MATERIALS TESTING

2 March 2020

Miller Gray  
P.O. Box 303130  
Austin, Texas 78703

Attn: Mr. Dale Gray, P. E.

Re: Erosion Mitigation Projects  
Backbone Creek and Lake Marble Falls  
City of Marble Falls, Texas

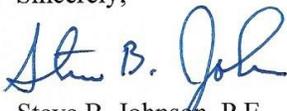
Dear Mr. Gray:

As per your request we are providing a cost estimate for a Geotechnical Services for the above referenced projects. The purpose of the investigation is to determine subsurface soil conditions at the site and obtain samples for laboratory testing in order to provide geotechnical design parameters for waterfront erosion mitigation. The projects include Ave N Low Water Crossing, Water Intake on Lakeshore Drive, Slope at LCRA Tower on Backbone Creek, Johnson Park Boat Launch, and Buena Vista Drive Slope at Backbone Creek.

We plan to investigate the site by drilling, logging and sampling 15 soil borings ranging from 15 feet to 40 feet each. The number and depth of the borings will be dependent on actual soil conditions encountered. If varying soil conditions are encountered, then the borings may need to be deeper or additional borings may need to be drilled. Laboratory testing will be performed on selected samples and data obtained will be used to determine the engineering characteristics of the soil. Laboratory testing include Atterberg Limits, Moisture Contents, Minus 200 Sieves, Particle Gradations (5 sieves), Direct Shear and Triaxial Tests. Our engineering reports will include boring logs, boring location plan, laboratory test results, description of soil conditions and bulkhead wall design parameters.

The cost for the above work will be on the order of \$28,081.00. We guarantee not-to-exceed this cost figure without client approval. An itemized cost estimate is attached. If these costs are satisfactory, please sign and return a copy to us for our files. We appreciate the opportunity to offer our services. If we can answer any questions concerning the above, please do not hesitate to call.

Sincerely,



Steve B. Johnson, P.E.  
Geotechnical Division Manager

Holt Engineering, Inc.  
TBPE Firm Registration No. F-430

**GEOTECHNICAL INVESTIGATION  
FOR  
CITY OF MARBLE FALLS EROSION PROJECTS  
BACKBONE CREEK AND LAKE MARBLE FALLS  
MARBLE FALLS, TEXAS**

**COST ESTIMATE**

1.	Engineer's Site Visits – 6 Hrs. @ \$155.00/Hr. ....	\$ 930.00
	Drilling Coordinator – 4 Hrs. @ \$110.00/Hr. ....	440.00
2.	Rig Mobilization:.....	600.00
	Support Truck and Crew Travel Time 8 Days @ \$245.00/Day .....	1,960.00
3.	Drilling, Logging, and Sampling:	
	<i>Ave N Low Water Crossing</i>	
	3 Probe Holes 15 feet @ \$225.00 Ea.....	675.00
	<i>Intake Structure</i>	
	1 Boring @ 35 feet – 35 LF @ \$18.00/Ft.....	630.00
	<i>Backbone Creek @ LCRA Transmission Tower</i>	
	2 Borings @ 35 feet – 70 LF @ \$18.00/Ft.....	1,260.00
	<i>Johnson Park Boat Ramp</i>	
	3 Borings @ 25 feet – 75 LF @ \$18.00/Ft.....	1,350.00
	<i>Buena Vista Drive Slope at Backbone Creek</i>	
	3 Borings @ 25 feet – 75 LF @ \$18.00/Ft.....	1,350.00
	3 Borings @ 40 feet – 120 LF @ \$20.00/Ft.....	2,400.00
	Additional Cost for Coring 3 borings	
	5 feet into Shale 15 Ft @ 3 @ \$200.00 Ea. ....	600.00
	Geologist Time for Photographing	
	Soil Samples 4 Hrs. @\$120.00Hr. ....	480.00
	<b>Drilling Sub Total .....</b>	<b>8,745.00</b>
4.	Laboratory Testing	
	Atterberg Limits -14 @ \$70/Ea. ....	980.00
	Moisture Contents – 14 @ \$25.00/Ea. ....	350.00
	Minus 200 Sieve – 14 @ \$50.00/Ea. ....	700.00
	Particle Gradation (5 Sieves) 18 @ \$85.00/Ea. ....	1,530.00
	Unconfined Compression Test 6 @ \$75.00Ea. ....	450.00
	Unconsolidated Undrained Tests 4 @ \$84.00Ea. ....	336.00

City of Marble Falls Erosion Projects

2 March 2020

Page 2 of 4



2220 Barton Skyway – Austin, Texas – 78704 – Ph. (512) 447-8166 – Fax (512) 447-0852

Direct Shear 6 @ \$600.00/ Ea. ....	3,600.00
Multistage Triaxial Tests 3 @ \$800.00 .....	2,400.00
CU Triaxial Tests w/ Pore Pressure 3 @ \$1,000.00 Ea. ....	<u>3,000.00</u>
<b>Laboratory Total .....</b>	<b>13,346.00</b>

5. Engineering Report with Design Parameters  
for Design of Erosion Mitigation: ..... 2,000.00

**TOTAL ESTIMATED COST ..... \$ 28,021.00**

**CLIENT INFORMATION:** (Responsible Billing Party)

This information must be filled out before the geotechnical investigation can be scheduled. The undersigned agrees to the above scope of work and following conditions and is responsible for payment.

Company Name (if applicable): \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_ Signature: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**THE ABOVE COST ESTIMATE IS BASED ON THE FOLLOWING CONDITIONS:**

1. Holt will notify TEXAS 811 to locate public utilities. All city or private utilities on the site will be marked by the Owner prior to scheduling the drilling operation. Holt will make a reasonable effort to avoid underground utilities; however, if a utility should be breached it is the property owner's responsibility for repairs.
2. The attached cost estimate will change based on changes or alterations to the scope of services. Additional costs may be incurred for engineering consultation with the Architect, Civil or Structural Engineer, and/or Contractor.
3. The cost estimates included in this proposal are guaranteed for 90 days from the date of this cost estimate.
4. Items and costs provided in the cost estimate may be moved between the various work elements to accommodate the overall project budget.
5. Payment is due within 30 days Net from date of invoice. Clients with outstanding balances past 30 days are subject to a late fee. It is the client's responsibility to report billing errors

City of Marble Falls Erosion Projects  
2 March 2020  
Page 3 of 4



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immediately upon receipt. Holt Engineering, Inc. is not responsible for billing errors not reported within 30 days of billing.

6. This is an agreement between the parties, whose names appear above, and no one else. Further, this agreement is not intended for any other person's benefit. The parties agree that there are no express or implied warranties applicable to the professional services provided under this agreement; instead, performance under this agreement will be measured by the standards of care applicable to licensed professional engineers in Texas.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please call us if we can be of any additional assistance.

City of Marble Falls Erosion Projects  
2 March 2020  
Page 4 of 4



2220 Barton Skyway – Austin, Texas – 78704 – Ph. (512) 447-8166 – Fax (512) 447-0852

1504 WEST 5TH STREET AUSTIN, TEXAS 78703 TEL: 512 / 478.0858 FAX: 512 / 474.1849

HICKS &  
COMPANY

ENVIRONMENTAL  
ARCHEOLOGICAL  
AND PLANNING  
CONSULTANTS

February 27, 2020

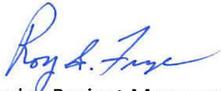
Dale Gray, P.E.  
Miller Gray  
7320 N. MoPac Expressway, Suite 203  
Austin, Texas 78731

Re: Scope of Services and Fee Estimate to support NRCS EWPP funding for City of Marble Falls  
stream erosion, stabilization, and restoration projects

Dear Mr. Gray:

This letter transmits a proposal for a Scope of Services and fee estimate for professional environmental services to support NRCS EWPP funding for five City of Marble Falls proposed stream erosion, stabilization, and restoration projects. This proposal is submitted in response to your email dated February 21, 2020. If you have any questions, please let us know.

Thank you.



Senior Project Manager

Attachment:

Scope of Services  
Fee Estimate

**Scope of Services  
City of Marble Falls Stream Erosion, Stabilization, and Restoration Projects  
February 27, 2020**

**General Understanding of the Project**

This proposal responds to an email request received on February 21, 2020, from Mr. Dale Gray of Miller Gray, for a Scope of Services and fee estimate for environmental services to support five stream erosion, stabilization, and restoration projects to be constructed by the City of Marble Falls with funding provided by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) National Emergency Watershed Protection Program (EWPP).

The five projects locations include: 1) the channel of Backbone Creek and its banks approximately 50 feet upstream and 50 feet downstream at the crossing of Avenue N; 2) the banks of Lake Marble Falls near the City’s water intake structure; 3) the LCRA water transmission main located near the confluence of Backbone Creek and Lake Marble Falls; 4) the west bank of Backbone Creek downstream of Avenue J; and 5) the limestone boulder wall along the east bank of Backbone Creek downstream of Avenue J.

**General Description of Environmental Services**

Work will include environmental investigations sufficient to satisfy data and information requirements of the NRCS EWPP funding program as well as Lower Colorado River Authority (LCRA) watershed regulations and will include the tasks identified below. Environmental compliance documentation will be based on a comprehensive analysis of potential impacts of a preferred alternative and include additional information for other alternatives. Additional work that may be identified based on results of the initial baseline analysis or in response to specific request(s) by the City of Marble Falls or Miller Gray will be supplemental to this Scope of Services.

**Task 1. Identification of Jurisdictional Waters of the U.S. (including wetlands) Subject to Federal Regulation under Section 404 of the Clean Water Act**

This task assumes that the five proposed projects will impact waters of the U.S. (WOTUS) and subsequently require authorization by the U.S. Army Corps of Engineers (USACE) under a Nationwide Permit (NWP) 37, Emergency Watershed Protection and Rehabilitation, pursuant to Section 404 of the Clean Water Act (CWA). Under this permit a Pre-Construction Notification (PCN) would be required and is therefore included in this Scope of Services. Issuance of this permit will be coordinated with the City of Marble Falls and/or NRCS under **Task 4**. If other USACE permits are required, then additional work to satisfy requirements of these permits would be included in a supplemental scope of services. The proposed project design will be reviewed, and site reconnaissance will be conducted, to determine existence of jurisdictional waters of WOTUS including wetlands and potential impacts requiring permitting under Section 404 of the CWA. Research will include use of National Wetlands Inventory (NWI) maps, National Hydrography Datasets (NHD) from the U.S. Geological Survey (USGS), USGS topographic maps, soil survey reports, and aerial photography as needed or required. Evaluation will include site reconnaissance following protocol of the USACE to identify and map boundaries of WOTUS. The boundaries will be identified by collecting geographical coordinates using a hand-held GPS receiver with sub-meter accuracy. The GPS coordinates will be downloaded to produce digital shapefiles that can

be superimposed with engineering schematics of the project alternatives to quantify potential impacts on WOTUS including wetlands. In coordination with the City of Marble Falls and NRCS, specific documentation needed to satisfy both USACE and NRCS requirements will be prepared. It is assumed that Miller Gray will provide any required engineering data to complete the PCN for NWP 37 or any other required permits. This will include design plans, schematics and estimates of the amount of fill to be placed in WOTUS.

### **Task 2. Investigation of the Potential Occurrence of Threatened or Endangered Species**

The project study area will be investigated to ensure compliance with the Federal Endangered Species Act (ESA). Information will be obtained and reviewed from databases maintained by the U.S. Fish and Wildlife Service (USFWS) and Texas Parks & Wildlife Department (TPWD) to determine county occurrence and the nearest known locations of potentially occurring species that are listed as threatened or endangered, candidates for listing, or species of concern. A summary list of potentially occurring species will be prepared. Habitat requirements for potentially occurring species will be investigated, including research of information contained on maps and aerial photography. Based on information obtained for potentially occurring species, range and distribution of the species, habitat requirements of the species, and scope of the project, a determination will be made as to the likelihood of impacts and whether additional investigations or studies would be needed. Results of these investigations will be included in a coordination letter that will be sent to the USFWS for review and comment.

### **Task 3. Investigation of Potential Adverse Effects to Cultural Resources**

The potential occurrence of cultural resources will be investigated and coordination with the Texas Historical Commission (THC) will be completed for Antiquities Code of Texas (ACT) compliance. In addition, because of USACE involvement, this project would fall under guidelines of Section 106 of the National Historic Preservation Act (NHPA), and the THC will review coordination documentation for Section 106 compliance. Initially, archival background research will be conducted utilizing the THC Sites Atlas and other pertinent resources to identify previously conducted investigations and recorded cultural resources (both archeological and historic) located within the vicinity of the proposed project area. Following background research, a coordination letter will be prepared, in consultation with the client, to introduce the project to the THC to discuss potential effects to documented resources and to present recommendations to achieve regulatory clearance under the ACT and Section 106. It is assumed that field survey will not be required for this project prior to construction; however, if a survey is required, it can be performed under a separate scope of services and fee estimate.

**Task 4. Investigation of other areas as required by NRCS environmental documentation.**

Additional areas of investigation will include conducting assessments of potential project effects on the following:

- 4a. Soil
- 4b. Water
- 4c. Air
- 4d. Plants
- 4e. Animals
- 4f. Socio-economic demographics

Coordination with the City of Marble Falls and/or NRCS will be conducted to ensure that information will be gathered and compiled in a manner that will satisfy NRCS reporting requirements.

**Task 5. Environmental Analysis of Alternatives**

An analysis of potential environmental and cultural resource impacts of the project alternatives will be investigated pursuant to NRCS documentation guidance. Results of the environmental impact analysis for the project alternatives will also be documented in the report described under **Task 7**. For the purposes of this Scope of Services, it is assumed that no more than three alternatives including a No Action Alternative, Preferred Build Alternative, and one additional (optional) build alternative will be evaluated.

**Task 6. Identification of Environmental Documentation and Permitting Necessary to Achieve Other Federal, State, And Local Environmental Compliance**

Based on information obtained in **Tasks 1–5**, required documentation and permitting to achieve other federal, state, and local environmental compliance, including compliance with LCRA watershed regulations, will be identified and listed in a final report.

**Task 7. Report Preparation**

The results of evaluations described in **Tasks 1–6** will be documented in a manner sufficient to satisfy City of Marble Falls and NRCS environmental reporting requirements. In addition, the results of these evaluations will be documented in a final report that will be submitted to Miller Gray.

**This Scope of Services and fee estimate does not include the services listed below. If needed or required, such services would be performed under a supplemental scope of services and fee estimate.**

1. Completion of cultural resources field survey;
2. Preparation and coordination of USACE permits other than an NWP 37;
3. Coordination with the USFWS under Sections 7 or 10 of the ESA if endangered species may be affected by the project;
4. Presence/absence surveys of threatened or endangered species;
5. Phase 1 and Phase 2 karst surveys;
6. Tree surveys;
7. Systematic vegetation inventories; and

8. Surface or subsurface excavation to investigate contamination from hazardous materials.

#### **Study Area**

The study area will include project limits defined by maps to be provided by Miller Gray. GIS shapefiles of the project alternatives and preferred alternative will be provided by Miller Gray as needed or required by Hicks & Company to complete investigations identified in **Tasks 1–6**.

#### **Deliverables**

1. Information will be gathered and compiled into written summaries and/or entered into specific NRCS data forms as needed or required by the NRCS environmental specialist. Such information or data forms will be submitted through Miller Gray.
2. An NWP 37 PCN and associated documentation will be prepared and submitted through Miller Gray to the NRCS Environmental Specialist for coordination with the USACE.
3. A coordination letter will be prepared for submission to the THC for purposes of regulatory clearance. A draft version of this letter will be submitted to the City of Marble Falls through Miller Gray for review prior to submission to the THC.
4. A coordination letter will be prepared and submitted to the USFWS for review and comment after review by Miller Gray and the City of Marble Falls.
5. A report will be prepared that will summarize results of the investigations described in **Tasks 1–6**. This report will be submitted to Miller Gray.

#### **Schedule**

Deliverables will be submitted according to a schedule mutually acceptable to Hicks & Company, Miller Gray, and the City of Marble Falls.

#### **Other Assumptions:**

1. The project will require NRCS funding and will therefore be subject to investigations and documentation specific to these funding requirements.
2. Design maps and plans will be provided in a GIS-compatible format by Miller Gray.
3. Rights of entry will be obtained and coordinated by Miller Gray.
4. If substantial changes occur to the project alternatives or preferred alternative to require reevaluations after field investigations or a majority of baseline data collection has occurred, such reevaluations will be supplemental to this scope of services.
5. Costs are included for estimating projected fees; billing will be based on actual rates.

**HICKS & COMPANY ENVIRONMENTAL/ARCHEOLOGICAL CONSULTANTS**  
**FEE ESTIMATE**  
**February 27, 2020**

LABOR	Sr. Env'l Scientist II \$151.50	Env'l Scientist II \$121.20	Env'l Prof III \$106.05	Env'l Prof II \$96.96	Env'l Prof I \$86.35	Env'l Staff I \$69.69	TOTAL
<b>TASK 1 - Identification of Waters of U.S.</b>							
Pre-field Research	2		2				4.0
Site Investigation/GPS mapping of WOTUS	8	8					16.0
Compilation/tabulation of data	1	8	2				11.0
Prepare NWP # 37 Pre-construction Notification		40			4		44.0
GIS/Graphics			8				8.0
PM/QA-QC	1	1					2.0
Task 1 Labor Hours	12.0	57.0	12.0	0.0	4.0	0.0	85.0
<b>Task 1 Subtotal</b>	<b>\$ 1,818.00</b>	<b>\$ 6,908.40</b>	<b>\$ 1,272.60</b>	<b>\$ -</b>	<b>\$ 345.40</b>	<b>\$ -</b>	<b>\$ 10,344.40</b>
<b>TASK 2 - Investigation of T&amp;E</b>							
Database Review and Update		6					6.0
Field Investigation		2					2.0
Prepare USFWS Coordination Letter	4						4.0
GIS Support		2					2.0
Task 2 Labor Hours	4.0	10.0	0.0	0.0	0.0	0.0	14.0
<b>Task 2 Subtotal</b>	<b>\$ 606.00</b>	<b>\$ 1,212.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,818.00</b>
<b>TASK 3 - Investigation of Effects to Cultural Resources</b>							
Background review		8					8.0
Prepare THC coordination Letter		4					4.0
GIS Support		1					1.0
PM/QA-QC		1					1.0
Task 3 Labor Hours	0.0	14.0	0.0	0.0	0.0	0.0	14.0
<b>Task 3 Subtotal</b>	<b>\$ -</b>	<b>\$ 1,696.80</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,696.80</b>
<b>TASK 4 - Investigation of Other Env. Components</b>							
Soil	2						2.0
Water	2						2.0
Air	2						2.0
Plants	2						2.0
Animals	2						2.0
Socio-economic demographics						8	8.0
GIS Support			3				3.0
PM/QA-QC	2						2.0
Task 4 Labor Hours	12.0	0.0	3.0	0.0	0.0	8.0	23.0
<b>Task 4 Subtotal</b>	<b>\$ 1,818.00</b>	<b>\$ -</b>	<b>\$ 318.15</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 557.52</b>	<b>\$ 2,693.67</b>
<b>Task 5 - Completion of Alternatives Analysis</b>							
Waters of the U.S.		3					3.0
T&E		3					3.0
Cultural Resources		3					3.0
Other Environmental Components		3					3.0
GIS Support		1					1.0
PM/QA-QC	1						1.0
Task 5 Labor Hours	1.0	13.0	0.0	0.0	0.0	0.0	14.0
<b>Task 5 Subtotal</b>	<b>\$ 151.50</b>	<b>\$ 1,575.60</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,727.10</b>
<b>Task 6 - Identification of other Permitting Requirements</b>							
Coordination with LCRA	2						2.0
Identify other requirements	3						3.0
Task 6 Labor Hours	5.0	0.0	0.0	0.0	0.0	0.0	5.0
<b>Task 6 Subtotal</b>	<b>\$ 757.50</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 757.50</b>
<b>Task 7 - Preparation of Report</b>							
Compile Results of Tasks 1-6	4	2					6.0
Prepare Report	32	4		2	2		40.0
GIS Support			4				4.0
PM/QA-QC	3						3.0
Task 7 Labor Hours	39.0	6.0	4.0	2.0	2.0	0.0	53.0
<b>Task 7 Subtotal</b>	<b>\$ 5,908.50</b>	<b>\$ 727.20</b>	<b>\$ 424.20</b>	<b>\$ 193.92</b>	<b>\$ 172.70</b>	<b>\$ -</b>	<b>\$ 7,426.52</b>
<b>Category Total Hours</b>	<b>73.0</b>	<b>100.0</b>	<b>19.0</b>	<b>2.0</b>	<b>6.0</b>	<b>8.0</b>	<b>208.0</b>
<b>Category Total Cost</b>	<b>\$ 11,059.50</b>	<b>\$ 12,120.00</b>	<b>\$ 2,014.95</b>	<b>\$ 193.92</b>	<b>\$ 518.10</b>	<b>\$ 557.52</b>	<b>\$ 26,463.99</b>
<b>TOTAL LABOR</b>							<b>\$ 26,463.99</b>
<b>DIRECT EXPENSES</b>							
Mileage (94 miles/trip, 1 trip)	Unit	Rate	Quantity				TOTAL
	mile	\$0.575	94				\$ 54.05
Field supplies (GPS rental)	day	\$60.00	1				\$ 60.00
<b>TOTAL DIRECT EXPENSES</b>							<b>\$ 114.05</b>
<b>TOTAL COST</b>							<b>\$ 26,578.04</b>

**April 21, 2020**

**7. REGULAR AGENDA**

- (e) Discussion and Action on Resolution 2020-R-04D expressing intent to finance expenditures to be incurred by the City for project costs associated with the Emergency Watershed Protection (EWP) Program, including engineering design, permitting, and construction for the five identified sites. *Kacey Paul, City Engineer*
-



**Council Agenda Item Cover Memo**  
**April 21, 2020**

**Agenda Item No.:** 7(e)  
**Presenter:** Kacey Paul, P.E., City Engineer  
**Department:** Engineering  
**Legal Review:**

**AGENDA CAPTION**

Discussion and Action on Resolution 2020-O-04D expressing intent to finance expenditures to be incurred by the City for project costs associated with the Emergency Watershed Protection (EWP) Program, including engineering design, permitting, and construction for the five identified sites.

**BACKGROUND**

The City of Marble Falls had been awarded a grant through the USDA NRCS EWP Program. Five sites that experienced erosion issues from the October 2018 flood event were identified for the awarded grant. Those sites include:

- Avenue N crossing at Backbone Creek
- Avenue J crossing at Backbone Creek
- Raw Water Intake at Lake Marble Falls
- Backbone Creek at Buena Vista
- Backbone Creek at LCRA tower

The EWP Program has awarded money in a cost-share grant with EWPP at 75/25 and will be issued via reimbursement for construction expenses. The total breakdown for construction costs is \$2,105,629 from NRCS and \$701,876.33 from the City.

Additionally, NRCS offers Technical Assistance (TA) costs of 8.5% of the total NRCS contribution, totaling \$178,978.47. The TA funds can be used for engineering services, contract management, etc. This amount is not meant to fully cover engineering costs. The proposed engineering design contract total is \$339,822, leaving a City portion of \$160,843.53.

The total commitment to the City is \$701,876.33 for 25% match on construction costs and \$160,843.53 for the City's portion to cover engineering, for a total of \$862,719.86.

The proposed Resolution is to allow the City to execute project related contracts and pay for project related expenses, such as engineering design, permitting, bid phase services, surveying, and/or construction prior to funding procurement.

Once the Project Agreement is signed, the City of Marble Falls has 220 days to complete construction. Once the City has run out of time on the project, funds will be de-obligated. Due to the time limitations of this program and the that the grant will pay the City through reimbursement, the City will be responsible for a variety costs associated with the project. Reimbursements for the grant will be processed throughout the project, roughly on a monthly basis. This Resolution would allow the City to cover the costs of the project without delays. The City is asking Council for approval of the Resolution.

### **RECOMMENDATION**

City staff recommends approval of the Resolution for the Intent to Finance Expenditures for the EWP Program, we will propose a summer 2020 bond sale to fund the reimbursement.

#### **Memo Contents:**

- Resolution Expressing Intent to Finance Expenditures                      Pages 3 – 5

## RESOLUTION NO. 2020-R-04D

### RESOLUTION EXPRESSING INTENT TO FINANCE EXPENDITURES TO BE INCURRED BY THE CITY OF MARBLE FALLS, TEXAS FOR PROJECT COSTS ASSOCIATED WITH THE EMERGENCY WATERSHED PROTECTION (EWP) PROGRAM, INCLUDING ENGINEERING DESIGN, PERMITTING, AND CONSTRUCTINO FOR THE 5 IDENTIFIED SITES.

**WHEREAS**, the City of Marble Falls, Texas (the "Issuer") is a home rule municipality and political subdivision of the State of Texas authorized to issue obligations to finance its activities pursuant to Subchapter C of CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE, and other provisions, the interest on which is excludable from gross income for federal income tax purposes ("tax-exempt obligations") pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code");

**WHEREAS**, the Issuer will make, or has made not more than 60 days prior to the date hereof, payments with respect to the acquisition, construction, improvements and upgrades of the projects listed on Exhibit "A" attached hereto;

**WHEREAS**, the Issuer desires to reimburse itself for the costs associated with the projects listed on Exhibit "A" attached hereto from the proceeds of tax-exempt obligations to be issued subsequent to the date hereof; and,

**WHEREAS**, the Issuer reasonably expects to issue tax-exempt obligations to reimburse itself for the costs associated with the projects listed on Exhibit "A" attached hereto.

#### **NOW, THEREFORE, BE IT RESOLVED THAT:**

**Section 1.** The Issuer reasonably expects to reimburse itself for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof and that are to be paid in connection with the acquisition, construction, improvements and upgrades of the projects listed on Exhibit "A" attached hereto from the proceeds of tax-exempt obligations to be issued subsequent to the date hereof.

**Section 2.** This Resolution is also made to evidence the intent of the Issuer to make such reimbursements under Treas. Reg. Section 1.150-2 and Section 1201.042, Texas Government Code.

**Section 3.** The Issuer reasonably expects that the maximum principal amount of tax-exempt obligations issued to reimburse the Issuer for the costs associated with the projects listed on Exhibit "A" attached hereto will not exceed \$2,000,000.

**Section 4.** The Issuer intends to reimburse the expenditures hereunder not later than 18 months after the later of the date the original expenditure is paid or the date the projects are placed in service or abandoned, but in no event more than three years after the original expenditure is paid unless the projects are a construction project for which the Issuer and a licensed architect or engineer have certified on Exhibit “A” that at least five years are necessary to complete the projects in which event the maximum reimbursement period is five years after the date of the original expenditure.

*[The remainder of this page intentionally left blank.]*

**ADOPTED** this 21<sup>st</sup> day of April, 2020.

CITY OF MARBLE FALLS, TEXAS

By: \_\_\_\_\_  
John Packer, Mayor

ATTEST:

\_\_\_\_\_  
Christina McDonald, City Secretary

[CITY SEAL]