

PROFESSIONAL SERVICES AGREEMENT
TYLER COUNTY, TEXAS

TYLER COUNTY, a political subdivision of the State of Texas (hereinafter the “County”) with administrative offices at 507 North Pine Street, Woodville, Texas 75979, and **WASHBURN & COMPANY LAND SURVEYORS** hereinafter “Contractor”), whose primary place of business is located at 1409 North Washington Ave., Cleveland, Texas 77327 hereby enter into this Professional Services Agreement (hereinafter “Agreement”) effective the 7th day of **SEPTEMBER** 2021 (hereinafter “Effective Date”). The County and Contractor (collectively “the parties to this Agreement” or “the parties”) agree as follows:

1. OVERVIEW

Surveying of properties, within Tyler County, participating in the Tyler County Buyout Program, a HUD funded Community Development Block Grant Disaster program for low-moderate income families that received damage from the 2017 Disaster Event.

2. SERVICES

Contractor agrees to perform services for the County in accordance with the County’s instructions and, in particular, the instructions of Ken Jobe and/or legal counsel for the Tyler County Commissioners Court; and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be limited to those services and terms attached hereto as Exhibit “A”, and any subsections of Exhibit “A”, if as and when they are attached hereto and signed by the parties (collectively “the Work”). If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibits “A” and/or “C”), the Compensation cited in Section 5 of this Agreement may also be amended to conform with the change in Scope of Services, as agreed by the parties.

3. ADDITIONAL TERMS

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit “C”, attached hereto.

4. DURATION

The parties agree that the Work shall be completed Ninety (60) days after commencement date. (hereinafter the “Completion Date”). In the event that Contractor is unable to complete the Work by the Completion Date, Contractor shall request an extension of the Completion Date in writing no later than fifteen (15) business days prior to the Completion Date. The County may grant extensions of the Completion Date for all reasonable extension requests and shall do so in writing.

5. COMPENSATION

Contractor will be compensated for the Work on a per house basis, the terms of which are cited in Contractors fee list, which is attached hereto as Exhibit “B.” Despite any reference to Contractors fee list, which shall be used to calculate invoice amounts for closing under this Agreement or a change in the Scope of Services (i.e. Amendment), the parties agree that the County shall pay Contractor a total fee not to exceed ten thousand dollars (\$10,000 USD) for the Work under this Agreement.

6. PAYMENT

Contractor shall invoice the County for the Work performed under this Agreement for the formal closing. The County agrees to promptly pay all invoices in accordance with Texas Government Code Chapter 2251 and by bringing payment to Contractor's address stated in Section 8, below at closing.

7. NOTICE OF COMPLETION

Upon completion of the Work, Contractor shall send a Notice of Completion to the County in writing, and the County shall have the option to inspect the Work (or product thereof) before it is considered complete under this agreement. If the County is satisfied that the work under this agreement is complete, the County shall send the Contractor an Acceptance of Completion in writing. If, after inspection, the County does not agree that the Work is complete or believes that the Work is of deficient quality, the County shall send Contractor a Deficiency Letter, stating the specific aspects of the Work that are incomplete and/or deficient. If, after ten (10) business days from the County's receipt of Contractor's Notice of Completion, the County does not send Contractor either an Acceptance of Completion or a Deficiency Letter, the Work under this Agreement shall be considered complete.

8. NOTICE (GENERAL)

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Tyler County, Attn: Jackie Skinner, County Auditor, 507 North Pine Street, Woodville, Texas 75979; <jskinner.aud@co.tyler.tx.us>.

All notices issued by the County under or regarding this Agreement shall be provided in writing to Contractor at its primary place of business.

Notices from one party to another under this Section may be made by U.S. Mail, parcel post, Facsimile, or Electronic Mail, sent to the designated contact at any of the designated addresses cited above.

9. INSURANCE

Contractor agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County's acceptance of Contractor's Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, Contractor shall, at its sole expense, provide and maintain Commercial General Liability insurance that meets or exceeds the industry standard for professional services providers in Contractor's field of employment and for the type of services that are being performed by Contractor under this Agreement. Such insurance coverage shall specifically name the COUNTY as co-insured. This insurance coverage shall cover all perils arising from the activities of Contractor, its officers, directors, employees, agents or subcontractors, relative to this Agreement. Contractor shall be responsible for any deductibles stated in the policy. A copy of the current Certificate of Liability Insurance is attached hereto as Exhibit "D". A true copy of each new Certificate of Liability Insurance shall be provided to the COUNTY within seven (7) days of the new policy date at the following address: Tyler County Courthouse, 507 North Pine Street, Woodville, Texas 75979.

So long as this Agreement is in effect, Contractor shall not cause such insurance to be canceled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days

after the COUNTY has received written notice as evidenced by a return receipt of registered or certified mail.

10. MUTUAL INDEMNITY

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable.

The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement.

Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

11. COMPLIANCE WITH LAWS

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

12. SURVIVAL

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 3, 5, 8, 10, 12, 14, 15, 16, 17, 18, 20, 21 and 22.

13. FORCE MAJEURE

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

14. SEVERABILITY

If any Section or provision of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are as consistent with the parties' intents as possible.

15. MULTIPLE COUNTERPARTS

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

16. SECTION HEADINGS, EXHIBITS

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled "Overview,"

shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

17. WAIVER BY PARTY

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

18. GOVERNING LAW AND VENUE

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Tyler County, Texas.

19. ASSIGNMENT

Neither party to this Agreement may assign its duties, interests, rights, benefits and/or obligations under this Agreement, in whole or in part, without the other party's prior written consent thereto.

20. BINDING EFFECT

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

21. ENTIRE AGREEMENT; AMENDMENT

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this Agreement must be made in writing and signed by the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.

22. WORK PRODUCT

Any and all product, whether in the form of calculations, letters, findings, opinions, or the like, shall be the property of Tyler County during and after performance of the Work. Contractor shall have a right to retain a copy of all Work product for record-keeping purposes.

23. TERMINATION BY COUNTY

This Agreement may be terminated by Tyler County, for any reason whatsoever, by providing thirty (30) days written notice to Contractor. Any approved services provided under this Agreement up to the date of termination may be invoiced by Contractor after the termination date, and payment of said invoice shall not be unreasonably withheld by the County.

Signatures by the parties to this Professional Services Agreement follow on the next page.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND DO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.

Tyler County, Texas

Washburn & Company Land Surveyors

By: Jaques Blanchette
Tyler County Judge

By: _____
Title: _____

EXHIBIT A

Scope of Work

Surveying services required are for the County's 2017 Disaster Buyout Program. The County may require up to fifteen (15) parcels surveyed for the program. The Scope of Work will include research on each property including the identification of all easements, floodplain, and pertinent information in regard to each property for purposes of purchase and determination of how best to use each site once acquired.

Scope of Work (SOW) to include:

- **Complete field work (staking out property, recover and locate pertinent survey monuments as necessary to establish the property lines, horizontal & vertical control, etc.) to physically show property configuration.**
- **Complete all necessary RPLS calculations, drafting, RPLS preparation, line work, RPLS final review of property.**
- **Complete boundary survey, easement establishment, research, set survey monuments and applicable right-of-way markers.**

EXHIBIT B

Estimated at a \$1,500/ Day fee for each Survey. This fee encompasses the start to finish of a survey. (Field Work, Research/Deed research, drafting plans & time)

May vary depending on how many at one time are completed. Once addresses are known, more exact amounts will be provided.

EXHIBIT C

Additional Terms to the Services provided by Contractor, if any, are as follows:

A. Required Contract Provisions (Contracts using Federal Funds)

B. _____

C. _____

D. _____

E. _____

F. _____

G. _____

H. _____

I. _____

J. _____

K. _____

L. _____

EXHIBIT D

Certificate of Insurance