

**CITY OF ARDMORE**  
ENGINEERING DEPARTMENT  
Ardmore, Oklahoma

Commission Letter No. 5631  
Meeting Date: February 6, 2023

Mayor and Commissioners  
City of Ardmore  
Ardmore, Oklahoma

SUBJECT: Sunset Drive Street and Storm Sewer Improvements Engineering

Dear Commissioners:

It is proposed to improve Sunset Drive from Cloverleaf to just north of 6<sup>th</sup> Avenue SW. As the design has progressed, it was found that additional engineering work has to be completed. In the current design, there is a major conflict with the City's sanitary sewer. Due to environmental concerns the design of the outlet structure for the large pond found on the west side of Sunset, just north of Cloverleaf, has to be modified to avoid the sanitary sewer.

We entered into an agreement with EST, Inc in 2018, to complete the design for the roadway and storm sewer system which includes this outlet structure. They have been working with us since that time to complete the design. Following the establishment of the scope of services needed to mitigate this conflict, we have prepared an engineering supplemental agreement with EST, Inc. to complete this necessary design, attached herewith. The fees are as follows:

**Table 1: Original Agreement**

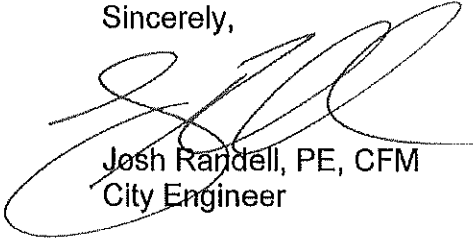
Preliminary Engineering	\$138,000.00
Final Engineering	\$64,000.00
Engineering During Construction	\$15,000.00
Total Fee	\$217,000.00

**Table 2: Supplemental Agreement**

Preliminary Engineering	No Change
Final Engineering	\$31,000.00
Engineering During Construction	No Change
Total Fee	\$248,000.00

EST has done excellent engineering for the City before and is qualified to undertake this work. To complete the final engineering needed for the project, an additional \$31,000.00 is needed. Funds are available in the General Fund to pay for required engineering. We therefore request that the Commission approve the agreement and authorize the Mayor to sign the contract attached.

Sincerely,



Josh Randell, PE, CFM  
City Engineer

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



City Manager

SUPPLEMENTAL AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING SERVICES  
**SUNSET DRIVE IMPROVEMENTS**  
ARDMORE, OKLAHOMA

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Ardmore, Oklahoma, with offices located at 23 S. Washington, Ardmore, OK (hereinafter referred to as the "City"); and EST, Inc., with offices located at 480 24th Avenue NW, Suite 244, Norman, Oklahoma 73069 (hereinafter referred to as the "Engineer").

WITNESSETH:

WHEREAS, the City desires to widen Sunset Drive near its intersection with Hollingsworth Street and improve the drainage within the project site

WHEREAS, the City has agreed to employ the Engineer to prepare the engineering plans and special specifications required to complete the Project as indicated in ARTICLE I, Scope of Services.

NOW, THEREFORE, in consideration of these premises and the mutual covenants herein contained, the parties hereto agree as follows:

**1.0 ARTICLE I - SCOPE OF SERVICES.** The services of the Engineer shall be provided in 3 independent and sequential phases

1.1 PRELIMINARY ENGINEERING (Phase 1 Services). - No Change

1.2 FINAL ENGINEERING (Phase 2 Services).

Revision to PS&E for plan changes requested by the city via email for avoidance of the sanitary sewer and right of way revisions. Requests are for revisions to the special outlet structure from the private pond and the inclusion of a slotted drain at a driveway.

1.3 ENGINEERING DURING CONSTRUCTION (Phase 3 Services). – No Change

**2.0 ARTICLE II - CITY'S RESPONSIBILITIES.** - No Change

**3.0 ARTICLE III - TIME SCHEDULE**

3.1 Time of Phases. The Engineer agrees to proceed with the services immediately upon receipt of written Notice to Proceed (NTP) by the City and to employ such personnel as required to complete the Scope of Services in accordance with the following schedule:

3.1.1 Preliminary Engineering No Change

3.1.2 Final Engineering 90 days

3.1.3 Engineering During Construction No Change

3.2 The Project time schedule as set forth herein does not include review time by the City.

**4.0 ARTICLE IV - COMPENSATION.** The City agrees to pay the Engineer for the requisite services as described herein on the following basis:

4.1 Preliminary Engineering No Change

4.2 Final Engineering \$ 31,000.00

4.3 Engineering during Construction No Change

4.4 Total. Fee not to be exceeded \$ 248,000.00

4.5 The Engineer shall not proceed with the services described herein until written authorization in the form of Notice-to-Proceed is received from the City.

4.6 For items in ARTICLE I, Scope of Services, partial payment shall be made to the Engineer for those portions of the services completed. The Engineer shall submit to the City a monthly statement showing an estimate of completion, and the portion of compensation requested for each element and phase of the services. The request for partial payments will not be in excess of the value of the services completed at the time the statement is rendered.

4.6 Progress payments shall be made to the Engineer within thirty (30) days of receipt of proper billing statement.

#### **5.0 ARTICLE V - MISCELLANEOUS PROVISIONS**

5.1 Change in Scope. The Scope of Services described herein shall be subject to modification or supplement upon the written agreement of the contracting parties. Any such modification in the Scope of Services shall be incorporated in this Agreement by Supplemental Agreement executed by both parties.

5.2 Ownership of Drawings and Contract Documents. Original documents, tracings, plans specifications and maps prepared or obtained under the terms of the Contract shall be delivered to and become the property of the City and basic survey notes and sketches, charts, computations, and other data shall be made available upon request by the City without restriction or limitation on their use. In the event any of the above documents are re-used by the City, the nameplates will be removed and the Engineer will be released and held harmless of subsequent liabilities. There shall be no legal limitations upon the

City in the subsequent use of plans or ideas developed in this project and incorporated in the preliminary or final reports or plans for the subsequent preparation of construction plans.

5.3 Electronically Produced Documents. Electronically produced documents will be submitted in data files compatible with the most recent version of AutoCAD. The Engineer makes no warranty as to the compatibility of the data files beyond the above specified hardware and release or version of the stated software.

5.3.1 Because data stored on electronic media can deteriorate undetected or be modified without the Engineer's knowledge, the electronic data files submitted to the City or other Agencies will have an acceptance period of thirty (30) days. If during that period the City finds any errors or omissions in the files, the Engineer will correct the errors or omissions as a part of the basic Agreement. The Engineer will not be responsible for maintaining copies of the submitted electronic data files after the acceptance period. Any changes requested after the acceptance period will be considered additional services for which the Engineer shall be reimbursed including the cost of materials.

5.3.2 The data on the electronic media shall not be considered the Engineer's instrument of service. Only the submitted hard copy documents will be considered the instrument of service. The Engineer's nameplate shall be removed from all electronic media provided to the City.

5.4 Engineer's Opinion of Probable Construction Cost. Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Engineer cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. However, the Engineer represents that he will use reasonable engineering care and judgment commonly exercised by an engineer in the same or similar circumstances in making and transmitting such cost estimates to the City.

5.5 Remedies. In the event of a claim, dispute and other matters in question arising out of or relating to this Agreement or the services to be rendered hereunder, the Engineer and the City agree to attempt to resolve such disputes in the following manner:

5.5.1 First, the parties agree to attempt to resolve such claims, disputes and other matters in question through direct negotiations between the appropriate representatives of each party.

5.5.2 Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining claim, dispute or other matter in question by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties.

5.5.3 Third, if the claim, dispute or other matter in question, or any issues remain unresolved after the above steps, then such unresolved issues may, with the consent of both parties, be settled by binding arbitration in accordance with the rules of the American Arbitration Association current as of the date of this Agreement then pertaining.

5.6 Insurance. The Engineer shall procure and maintain at its expense during the effective period of this Contract the following insurance from insurance companies authorized to do business in Oklahoma covering all operations and services under this Contract performed by Engineer.

5.6.1 Workers' Compensation Insurance in accordance with applicable Oklahoma law.

5.6.2 Commercial General Liability in amounts not less than \$1 million combined single limit per occurrence and \$1 million aggregate for bodily injury, personal injury and property damage with endorsements to include broad form contractual, and broad form property damage.

5.6.3 Automobile Liability, Bodily Injury and Property Damage with a limit of \$1 million for occurrence, combined single limit including owned, hired and non-owned autos.

5.6.4 Professional Liability Insurance in amounts not less than \$1 million per claim and annual aggregate.

5.6.5 The Engineer shall furnish to the City a certificate or certificates of insurance showing compliance with this paragraph. The certificates shall provide that the insurance shall not be canceled until at least ten (10) calendar days written notice shall have been given to City.

5.7 Liability. To the extent permitted under Oklahoma Law each party will defend and indemnify and hold harmless the other party from and against third party claims for liability, damage, loss, costs and expenses, including attorney's fees, on account of injury or damage to persons or property occurring on or occasioned by facilities owned or controlled by such indemnifying party, unless such injury or damage resulted from the sole negligence of the other party. In the event negligence is attributable to both parties, each party shall be responsible for the resulting damages attributable to the negligence of such party whether such proportionate share is arrived at through agreement between the parties or as a result of litigation.

5.8 Law of Oklahoma To Govern. This Agreement shall be construed according to the laws of the State of Oklahoma. The Engineer shall comply with all local, state, and federal laws and regulations which govern the performance of this Agreement.

5.9 Force Majeure. Any delay or failure of Engineer in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God, war, riot, strike, fire, storm, flood, windstorm, discovery or uncovering of hazardous or toxic

materials or causes beyond the reasonable control of Engineer, provided that prompt written notice of such delay or suspension be given by Engineer to the City. Upon receipt of said notice, if necessary, the time for performing shall be extended for a period of time reasonably necessary to overcome the effect of such delays and Engineer shall be reimbursed for the cost of such delays.

5.10 Binding Upon Successors. This Agreement shall be binding upon the undersigned parties, their successors, partners, assigns, and legal representatives.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by their duly authorized officers in two (2) counterparts, both of which shall be deemed an original, on the day and year first above-written.

"CITY"  
CITY OF ARDMORE, OKLAHOMA

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

"ENGINEER":  
EST, INC.

ATTEST:

\_\_\_\_\_  
Michael Vahabzadegan, P.E.  
President

\_\_\_\_\_  
Title: Secretary (Paul Poynter)