

# CITY OF LEWISVILLE, TEXAS

## CONSTRUCTION AGREEMENT

Project: **CDBG Morningside Sanitary Sewer Manhole and Main Line Replacement Project No. R4801** (the “Project”).

This Construction Agreement (the “Agreement”) is made on this \_ January 2020, between the **City of Lewisville** (the “City”) and **Canary Construction, Inc.** (the “Contractor”).

1. Services. The Contractor shall commence and complete the rehabilitation of approximately 1,100 feet of 6 and 8-inch sanitary sewer lines in north Lewisville roughly bounded by Jones St. to the north, Valley Ridge Blvd. to the south, Mill St. to the west and Cowan Ave. to the east (the “Services”), and all extra work in connection with the Services, in accordance with and under the terms as stated in the Specifications for the CDBG Morningside Sanitary Sewer Manhole and Main Line Replacement Project, using the Alternate B specifications, where applicable (the “Specifications”), attached hereto as **Exhibit A**, CDBG Morningside Sanitary Sewer Manhole and Main Line Replacement Project Final Plans, using the Alternate B plans, where applicable (the “Plans”), attached hereto as **Exhibit B**, and this Agreement, and at the Contractor’s own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the Services, in accordance with the conditions and prices for the base bid and Alternate B items as stated in the Contractor’s Proposal (the “Proposal”) attached hereto as **Exhibit C**, and in accordance with the Specifications (**Exhibit A**) and Plans (**Exhibit B**), as prepared by the City and attached hereto. The Contractor will perform all Services in a good and professional manner and in accordance with industry standards. The Contractor is responsible for constructing a final product that is fully functional and fit for its intended purposes, and meets all requirements set forth in the Agreement, the Specifications (**Exhibit A**), and the Plans (**Exhibit B**). The City will be the sole judge of the acceptability of all work and Services performed under this Agreement.

The City shall perform such services as outlined in the Specifications (**Exhibit A**), if any.

2. Completion of Services. The Contractor hereby agrees to commence work within ten (10) calendar days after the date of the written notice to commence work and to fully complete the same within **175** consecutive calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the Specifications (**Exhibit A**).
3. Agreement Documents. The Agreement shall include the following documents, and this Agreement does hereby expressly incorporate same herein as if set forth verbatim in this Agreement:
  - A. This Agreement
  - B. The Specifications (**Exhibit A**) and the Plans (**Exhibit B**)
  - C. The Proposal (**Exhibit C**)

To the extent that any exhibit is in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of **Exhibit A** and **Exhibit B** jointly, then **Exhibit C** shall prevail in the order listed, except as specifically provided for in Section 28 of this Agreement.

4. Confidential Information. To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
5. Pricing. The City agrees to pay the Contractor in current funds the price or prices shown in the Proposal (**Exhibit C**).
6. Payment. Payments will be subject to the terms outlined in the Specifications (**Exhibit A**). The City shall remit payment within thirty (30) days after receipt of an invoice, in accordance with the Texas Prompt Payment Act (Tex. Gov’t Code Ch. 2251). All original invoices are to be sent to the City of Lewisville, Attention: AP Division, 151 West Church Street, Lewisville, Texas 75057 or P.O. Box 299002, 75029-9002.
7. Change Orders. Any changes to the Services that change the Agreement price or the Agreement time, as specified herein, must be authorized by the City in writing PRIOR to commencement of said work as provided for in the Specifications (**Exhibit A**). Any work performed without the City’s prior written consent will be at the sole expense of the Contractor.
8. Subcontractors. If subcontractors are used, the subcontractor will be directed and supervised solely by the Contractor. The Contractor shall require the subcontractor to hold the same insurance as required of the Contractor under this Agreement.
9. Right of Inspection and Required Repairs. The City shall have the right to observe and check all ongoing work in sufficient detail to determine if the Services are proceeding satisfactorily, and to inspect all Services completed before accepting them and making payments in accordance with this Agreement, as provided for in the Specifications (**Exhibit A**). Should any portion of the completed Services fail to meet the requirements of the City, the Contractor shall repair or replace items failing to meet requirement until items can be demonstrated to comply.
10. Termination. This Agreement may be terminated by the City under the terms outlined in the Specifications (**Exhibit A**).
11. Insurance. During the period of this Agreement, the Contractor will maintain, at its expense, insurance with limits not less than those prescribed in the Specifications (**Exhibit A**). All insurance must be reviewed and approved by the City **prior to commencement of work**.

12. Bonds. The Contractor shall provide bonds as required by the Specifications (**Exhibit A**) **prior to commencement of work**.
13. Worker's Compensation. The Contractor shall abide by the workers compensation requirements outlined in the Specifications (**Exhibit A**).
14. Independent Contractor. Contractor shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and Services. No term or provision herein or act of the City shall be construed as changing that status.
15. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including, but not limited to the Immigration Reform and Control Act (IRCA).
16. Governing Law and Venue. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
17. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
18. Tax Exempt Status. The City is exempt from and shall not pay state and local sales and use taxes on labor and materials incorporated into the Project. If necessary, it is the responsibility of the Contractor to obtain from the State Comptroller's Office a sales tax permit, resale certificate, and exemption certificate that will enable the Contractor to buy any materials for the Services and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.
19. Entire Agreement. This Agreement and its exhibits contain the entire agreement of the parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.
20. Assignment. This Agreement may not be assigned except as provided for in the Specifications (**Exhibit A**).
21. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.

22. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to:    Canary Construction, Inc.  
                                  Attn: Wayne Borstad, President  
                                  802 N. Kealy Avenue, Suite 101  
                                  Lewisville, TX 75057

If to City, to:            City of Lewisville  
                                  Attn: Todd White, C.P.M.  
                                  151 W. Church Street  
                                  Lewisville, Texas 75057

23. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

24. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

25. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

26. Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the

State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

27. Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

28. **INDEMNIFICATION**. **CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONTRACTOR'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY. ANY INDEMNIFICATION AGREED TO BY THE CITY IS ONLY TO THE EXTENT ALLOWED BY LAW.**

Section 17 of the Special Specifications outlined in the Specifications (Exhibit A) shall control regarding indemnification of the Engineer, as that term is therein defined.

29. Immigration Reform and Control Act (8 U.S.C. 1324a). The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Contractor if the City determines that (a) the Contractor or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Contractor or its Subcontractors fail to timely notify the City of an IRCA violation.
30. ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto (the “ADA”) and all regulations promulgated pursuant to the ADA. Contractor will be required to certify compliance, if required under the law or otherwise required by the City.
31. Protection of Resident Workers. The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement. The Contractor and its Subcontractors shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor’s or Subcontractor’s employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services or manufacturing products under the Contract Documents. The audit will be at the City’s expense.
32. Advertising. Contractor shall not advertise or publish, without the City’s prior consent, the fact that the Contractor has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

33. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](http://ethics.state.tx.us), must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

Contractor should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirement of Chapter 176.

34. Texas Government Code Chapter 2271. Pursuant to Texas Government Code Chapter 2271, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

35. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

**(SIGNATURES ON FOLLOWING PAGE)**

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

**CITY OF LEWISVILLE, TEXAS**  
Approved by the Lewisville City  
Council \_\_\_\_\_

**CONTRACTOR:**  
**CANARY CONSTRUCTION, INC.**

By: \_\_\_\_\_  
Donna Barron, City Manager

By: Wayne BA

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

Date: 1-31-2020

**802 N Kealy Ave #101**  
**Lewisville, TX 75057**

469-464-3823  
Telephone Number

Wayne@canaryconstruction.com  
E-mail Address or tina@canaryconstruction.com

75-2922071  
Federal Tax ID Number

Attest: \_\_\_\_\_  
Julie Worster

Attest: [Signature]

**CITY OF LEWISVILLE**  
151 West Church Street  
Lewisville, Texas 75057

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney