

PROFESSIONAL SERVICES AGREEMENT for EAST LEWISVILLE ELEVATED TANK REPAINT

The City of Lewisville, Texas, a Texas home rule municipality (the “City”), hereby engages Birkhoff, Hendricks & Carter, L.L.P., a Texas limited liability partnership authorized to conduct business in Texas (the “Consultant”), to perform professional services in connection with the East Lewisville Elevated Tank Repaint (the “Project”). The City and Consultant shall be referred to herein collectively as the “Parties.”

1. PROJECT. The Project is described as follows:

The Project will include construction plans, technical specifications, and bidding documents prepared for repainting the interior and exterior of the East Lewisville Elevated Tank located along Lady of the Lake Boulevard. The work will include the blasting of the interior of the tank to bare metal and coating that steel with NSF approved coating. The exterior will include blasting of exterior surfaces to bare metal and coating the steel. The interior painting will include a dehumidification system, and the exterior will include a containment system. The exterior painting will also include a new logo(s).

The Project is necessary to extend the life of the steel storage tank.

2. SCOPE OF SERVICES.

The scope of services includes various preliminary engineering activities normally associated with repainting a composite elevated tank with a steel bowl structure.

A. Design phase services include the preparation of construction plans, technical specifications, and bidding documents. These will be subject to approval by the City. Design Phase activities include the following:

- 1) Preliminary phase activities include attending preliminary conference with the City and other interested parties regarding objectives and priorities of the Project.
- 2) Prepare construction plans, with cover sheet that includes location map and sheet index.
- 3) Prepare General Note Sheet.
- 4) Prepare location map of the site.
- 5) Include City logo layout for the exterior of the tank.
- 6) Include in design a tank three-level water-quality sampling system.
- 7) Include tank mixing system.
- 8) Include miscellaneous tank enhancement.

- 9) Specify the cleaning and painting of mechanical piping at base of column.
 - 10) Specify replacement of obstruction light with LED fixture.
 - 11) Aerial photograph of the site and surroundings.
 - 12) Prepare preliminary Technical Specifications, which will be outside City provided Special Conditions.
 - 13) Include List of submittal data required for sealed competitive proposal evaluation.
 - 14) Submit one electronic file in .PDF format of the preliminary plans and two hardcopies in 11" x 17" maximum sheet size, Technical Specifications to the City for review.
 - 15) Meet with the City staff to discuss preliminary plans and technical specifications.
 - 16) Assist staff in having communications systems removed, de-energized or relocated during coating of tank.
 - 17) Revise and finalize preliminary plans and technical specifications, incorporating City comments.
 - 18) Formulate opinion of probable construction cost based on final plans.
 - 19) Prepare final bid documents including bid proposal forms, construction plans, specifications and contract documents. Provide final documents in .PDF format. Contract documents will be provided by the City.
 - 20) Prepare layout plan for inspection documentation.
- B. Bidding Phase services include assisting the City during the bidding procurement process. Services during the bidding phase of the project will be as follows:
- 1) Attend City's Pre-Bid Conference (if required by the City)
 - 2) Prepare Addenda if needed to answer questions by bidders and to make changes to the plans and specifications. The addenda will be signed, sealed, and dated by the Consultant, and provided to the City.
 - 3) Attend Bid Opening, assist the City during opening of bids.
 - 4) Assist the City with sealed competitive proposal evaluation and selecting the successful bidder.
 - 5) Check references provided by the bid package from the successful bidder selected, formulate opinion from information received and provide the City a recommendation for award of construction contract as a PDF copy.

- C. Construction Administration services during construction of the project will consist of working with the City and the successful contractor, review of shop drawings and review of the constructed work for general conformance to plans and specifications, until the project is complete. Services during the construction phase of the project will be as follows:
- 1) Attend City's pre-construction meeting and coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination. Prior to or immediately after coordination meeting make site visit to project location.
 - 2) Attend monthly site meetings and make periodic visits to the site (as distinguished from the continuous services of a resident project representative) to observe the progress and quality of the executed work, coordinate the work of our subconsultant performing construction observation and testing, and to determine in general if the work is proceeding in accordance with the contract documents. Climb the tank, as required to resolve conflicts.
 - 3) In performing these services, the Consultant will endeavor to protect the City against defects and deficiencies in the work of the contractor, but he cannot guarantee the performance of the contractor, nor be responsible for the actual supervision of construction operations or for the safety measures that the contractor takes or should take.
 - 4) Consultant is not responsible for contractor safety programs or safety plans. Consultant not responsible for quality of contractor's work.
 - 5) Consult and advise with the City; issue instructions to the contractor requested by the City; and prepare and issue routine change orders with City's approval.
 - 6) Provide written responses to requests for information or clarifications submitted by the Contractor.
 - 7) Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill test of material and equipment and other data which the contractor submits. This review is for the benefit of the City and covers only general conformance with the information given by the contract documents. The contractor is to review and stamp his approval on submittals prior to submitting to Consultant, and review by the Consultant does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with approved plans and specifications. Shop drawings will be handled electronically, with the city receiving drawings stamped "No Exceptions Taken" or "Make Corrections Noted".
 - 8) Obtain and review monthly and final estimates for payments to the contractor, furnish to the City any recommended payments to the contractors and assemble written guarantees which are required by the contract documents.

- 9) Accompany the City on their final inspection of the project for compliance with the contract documents, and submit recommendations concerning project status, as it may affect the City's final payment to the Contractor. Climb the elevated tank at this time as part of the final inspection.
- D. Exclusions are services specifically excluded from this contract scope included, but are not limited to the following:
- 1) Providing an on-site representative.
 - 2) Environmental impact statements and assessments.
 - 3) Fees for permits or advertising.
 - 4) Printing of bidding documents (completed by City).
 - 5) Certification that work is in accordance with plans and specifications.
 - 6) Environmental cleanup.
 - 7) Quality control and testing services during construction.
 - 8) Phasing of Contractors work.
 - 9) On-site safety precautions, programs and responsibility.
 - 10) Revisions and/or changes after completion of original design, unless to correct errors in the plans.
 - 11) Title searches, boundary surveys, or property surveys.
 - 12) Preparation of bidding documents.
 - 13) Structural analysis.
 - 14) Fiduciary responsibility to the Client.
- E. Special Services: As the City directs, special engineering services such as those described below, will be performed during the course of the project. Special Services are defined as functions not specifically included under Basic Services. A – Design Phase, B – Bidding Phase, and C – Construction Phase above. No Special Services will be performed unless authorized by the City. Special Services include:
- 1) Survey for Design
Complete field surveys for design that includes topography along the route and existing equipment layout inside the tank.
 - 2) Onsite Construction Quality Control

Perform onsite construction quality control to be completed by Steel Inspectors of Texas, Inc. with up to thirty (62) trips to the job site for coating, blasting, and welding inspections. A NACE Level 1 certified technician will be provided to perform inspections and testing of the following:

- a. Surface profile measurements of the surface preparation and cleanliness prior to coating application.
- b. Site conditions, including ambient conditions specified for coating application that will be verified prior to coating applications.
- c. Coatings applied will be documented for conformance to the specifications and product data sheets.
- d. Measure dry film thickness after each coating application.
- e. Low voltage pin hole Holiday testing of completed interior surfaces.

Preparation of daily reports for each site visit with pictures and documentation on on-going work and any deficiencies. Test reports to be provided to CITY as construction progresses.

3) Prepare Record Drawings

Utilizing City on-site representative and Contractor construction record information, consultant will prepare record drawings and provide an electronic copy in TIF format.

4) Miscellaneous

Miscellaneous items such as printing and mileage. Printing of hard copy plan set for preliminary and final reviews by City. Print hard copy of documents for use during construction. Mileage will be charged at the established IRS rate.

3. **PRIORITY OF 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 City's Insurance Requirements, attached hereto as Attachment "A"
- C. The Consultant's Proposal, attached hereto as Attachment "B"

To the extent that any attachment is in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Attachment "A", followed by Attachment "B" shall prevail in the order listed. **Any preprinted or standard terms and conditions or conditions of sale incorporated into Attachment "B" by reference are hereby declared void by agreement of the Parties.**

4. **COMPENSATION.** The total fee for services provided under this Agreement shall not exceed \$99,000.00.

Invoices shall be submitted by cover letter from the Consultant. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on percentage of work completed per identifiable unit of work. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

5. **INSURANCE.** The Consultant agrees to maintain insurance throughout the term of the Agreement, in accordance with Attachment “A”. All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Consultant. Certificates of insurance must be received and approved prior to commencement of work. The Consultant shall also review and forward certificates covering sub-consultants.
6. **REUSE OF DOCUMENTS.** All documents, including drawings and specifications prepared by the Consultant pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at City’s sole risk and without liability or legal exposure to the Consultant from all claims, damages, losses and expenses including attorneys’ fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon, in writing, by the City and the Consultant.
7. **OWNERSHIP OF DOCUMENTS.** Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Consultant. The Consultant shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.
8. **THE CONSULTANT 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, TO THE EXTENT THAT SUCH DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES**

UNDER TEXAS LAW. THE DUTY TO DEFEND SHALL NOT APPLY IN THE CASE OF A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, ITS AGENTS OR EMPLOYEES, OR OTHER ENTITY (EXCLUDING THE CONSULTANT OR ITS AGENT, EMPLOYEE, OR SUBCONSULTANT) OVER WHICH THE CITY EXERCISES CONTROL, IN WHICH INSTANCE THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED BY CONSULTANT IN PROPORTION TO THE CONSULTANT'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 OTHER PERSON OR ENTITY.

9. **EFFECTIVE DATE; TIME OF COMPLETION.** The effective date of this Agreement shall be the date upon which it is executed by a duly authorized representative of both Parties. A project schedule, shown in Attachment "B" is hereby included in this Agreement by reference. The Consultant agrees to perform the services in accordance with the schedule, to the extent over which the Consultant has control. Any changes to the schedule provided will require written acknowledgement and approval of the Parties prior to proceeding. The City's authorized department contract representative and the Purchasing Manager or their designee may approve changes to the schedule set forth in Attachment "B"-Project Schedule, so long as the date of final completion of the Project does not extend more than one year past the date the City issues the Notice to Proceed as set forth in Attachment "B" – Project Schedule.
10. **TERMINATION.** This Agreement may be terminated with or without cause at any time prior to completion of the Consultant's services by the City, or by the Consultant with cause, upon seven days written notice to the City at the address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Paragraphs 6, 7 and 8 above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
11. **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.
12. **INDEPENDENT CONTRACTOR.** Consultant 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.
13. **ADVERTISING.** Consultant shall not advertise or publish, without the City's prior written consent, the fact that the Consultant 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.

14. **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 Consultant, to: Birkhoff, Hendricks & Carter, L.L.P.
Attn: Andrew Mata Jr., P.E., Alternate Managing Partner
11910 Greenville Avenue, Suite 600
Dallas, Texas 75243

If to City, to: City of Lewisville
Attn: Earl Whitaker, Purchasing Manager
151 W. Church Street
Lewisville, Texas 75057

15. **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.
16. **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.
17. **ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
18. **COMPLIANCE WITH LAWS.** The Consultant shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.
19. **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). The Consultant shall establish appropriate procedures and controls so no services under the Agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement. The audit will be at the City's expense.

20. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Consultant 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 Consultant 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 Consultant and its Subcontractors shall at all times during the term of the Agreement 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 the Agreement with the Consultant if the City determines that (a) the Consultant or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Consultant fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Consultant or its Subcontractors fail to timely notify the City of an IRCA violation.
21. **ADA COMPLIANCE.** All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.
22. **SUCCESSORS AND ASSIGNS; ASSIGNMENT.** The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer this Agreement or its interest in this Agreement without the written consent of the other, and assignment without such consent shall be void. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.
23. **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.
24. **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.
25. **FORCE MAJEURE.** If by reason of Force Majeure, the Consultant shall be rendered unable wholly or in part to carry out its obligations under this Agreement then the Consultant 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 Consultant, 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 any contingency or cause beyond the reasonable control of the Consultant created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Consultant), fire, explosion or flood, strikes; provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Consultant and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Consultant gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

26. **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 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, must be filed with the City Secretary of the City no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City 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. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An office under Chapter 176 is a Class C misdemeanor.

Said person should consult with legal counsel if they have questions regarding their 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 to comply with the filing requirements of Chapter 176.

27. **PRESERVATION OF CONTRACTING INFORMATION.** In accordance with Section 552.372 of the Texas Government Code, if this Agreement has a stated expenditure of, or will result in the expenditure during the City's fiscal year of, at least one million dollars (\$1,000,000.00) in public funds for the purchase of goods or services by the City, the Consultant shall:
- A. preserve all contracting information related to this Agreement for the duration of this Agreement;
 - B. promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Consultant on request of the City; and
 - C. on completion of this Agreement, either:

- i. provide at no cost to the City all contracting information related to this Agreement that is in the custody or possession of the Consultant, or
- ii. preserve the contracting information related to this Agreement as follows:
 - a. construction projects: permanently
 - b. all other projects: four (4) years following completion of the Agreement.

For the purposes of this section, “contracting information” shall have the meaning given in Section 552.003 of the Texas Government Code.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Consultant 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.

29. TEXAS GOVERNMENT CODE CHAPTER 2271. Pursuant to Texas Government Code Chapter 2271, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (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. This section shall not apply if Consultant employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

30. TEXAS GOVERNMENT CODE CHAPTER 2274. Pursuant to Texas Government Code Chapter 2274, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274. Any terms used in this section which are defined in Texas Government Code Chapter 2274 shall have the meaning given therein.

31. TEXAS GOVERNMENT CODE CHAPTER 2275. Pursuant to Texas Government Code Chapter 2275, Consultant verifies it is not:

- (a) owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - (i) individuals who are citizens of China, Iran, North Korea, Russia, or other designated country, as that term is defined in Texas Government Code Section 2275.0101; or
 - (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country, as that term is defined in Texas Government Code Section 2275.0101; or
- (b) headquartered in China, Iran, North Korea, Russia, or other designated country.

The City may terminate this Agreement immediately without any further liability if the City determines, in its sole judgment, that Consultant has not provided accurate information in response to this section. This section is not applicable if the Agreement does not grant the Consultant direct or remote access to or control of critical infrastructure as defined in the Texas Government Code section 2275.0101, except as specifically allowed by the City for product warranty and support services.

- 32. TEXAS GOVERNMENT CODE CHAPTER 2276.** Pursuant to Texas Government Code Chapter 2276, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.

This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2276.

- 33. PERFORMANCE:** In compliance with Texas Local Government Code 271.904, the Consultant agrees to perform the services outlined herein with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and to perform the services outlined herein as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.
- 34. WAIVER.** The City's failure to act with respect to a breach by Consultant does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- 35. SEVERABILITY.** In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the

Parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

- 36. ENTIRE AGREEMENT; AMENDMENTS.** 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 Consultant, and no amendment to the Agreement shall be made except through a written agreement which has been executed by an authorized representative of both Parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.
- 37. NO OBLIGATION.** The City shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Consultant. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.
- 38. CERTIFICATION OF EXECUTION.** The Consultant and the person or persons signing and executing this Agreement on behalf of the Consultant, or representing themselves as signing and executing this Agreement on behalf of the Consultant, do hereby warrant and certify that this Agreement has been approved by appropriate action of the Consultant, and that the person or persons signing and executing this Agreement have been duly authorized by the Consultant to sign and execute this Agreement on behalf of the Consultant and to validly and legally bind the Consultant to all terms and conditions herein set forth.
- 39. CLOSURE.** By signature below, the Parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement on the _____ day of _____, 2025.

CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

By: _____
Claire Powell, City Manager

Date: _____

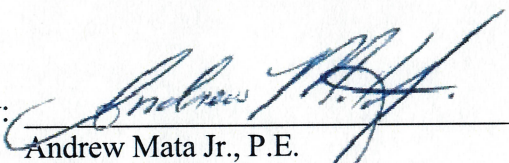
Attest: _____
Jennifer Malone, Acting City Secretary

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

CONSULTANT
Birkhoff, Hendricks & Carter, L.L.P.

By: 
Andrew Mata Jr., P.E.
Alternate Managing Partner

Date: 02/27/2025

Attest: 