

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**MAIN STREET AT RAILROAD WASTEWATER LINE REPLACEMENT**

The City of Lewisville, Texas (the “City”), a Texas home rule municipal corporation, hereby engages Birkhoff, Hendricks & Carter, L.L.P., a limited liability partnership authorized to conduct business in Texas (the “Consultant”), to perform professional services in connection with engineering activities required for preparation of plans and specifications for the Main Street at Railroad Wastewater Line Replacement, hereinafter (the “Project”). The City and Consultant shall be referred to herein collectively as the “Parties.”

**1. PROJECT.** The Project will include construction plans, technical specifications, and bidding documents prepared for the Main Street at Railroad Wastewater Line Replacement. The Project is necessary to provide buildout sewer service to Old Town.

**2. SCOPE OF SERVICES.**

The scope of services includes various preliminary engineering activities normally associated with sewer line plans.

A. Preliminary phase activities include attending preliminary conferences with the City and other interested parties regarding objectives and priorities of the Project.

B. 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:

- 1) Prepare construction plan cover sheet with location map and sheet index.
- 2) Prepare General Note Sheet.
- 3) Prepare coordinate control plan.
- 4) Set the horizontal and vertical alignment for proposed gravity line and encasement pipe. Confirm line size from master plan and recent studies.
- 5) Preparation of construction plan-profile sheets at a scale of not less than one (1) inch = forty (40) feet for the force main.
- 6) Prepare construction details.
- 7) Provide preliminary plans to utility companies to confirm utility company facility located from field surveys.
- 8) Develop erosion control plan.

- 9) Complete quantity take off, formulate opinion of probable construction cost, prepare preliminary bid schedule, specifications and contract documents using NCTCOG Standard Specifications as the base for 60% and 90% submittals.
  - 10) Submit two sets of 60% and 90% review plans (11-inch x 17-inch maximum sheet size and PDF format) and specifications for City review.
  - 11) Attend 60% and 90% design review meetings with the city to discuss the City's comments.
  - 12) Revise and finalize 60% and 90% plan sheets and technical specifications, incorporating City comments.
  - 13) Prepare final quantity take-off and formulate opinion of probable construction cost based on final plans.
  - 14) Prepare final bid documents including bid proposal forms, construction contract documents, construction plans and technical specifications.
  - 15) Conduct quality assurance and quality control review of the construction plans and specifications, prior to each submittal to the city.
  - 16) Submit final bid documents including bid proposal forms, construction plans, specifications, and contract documents to the City.
  - 17) Amend documents as required for approval by the City. Final construction plans shall be submitted in .PDF format and .dwg format.
- C. Consulting services during construction of the project will consist of working with the successful contractor, review of shop drawings and review of the constructed work for general conformance to plans and specifications. Services during the construction of the project will be as follows:
- 1) Prepare addenda as required. Addenda will be sealed, signed and dated by a Professional Engineer licensed in the State of Texas.
  - 2) Attend City's pre-construction meeting.
  - 3) Make two (2) 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.

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.

Consultant is not responsible for contractor safety programs or safety plans. Consultant not responsible for quality of contractor's work.

- 4) 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.
  - 5) 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".
  - 6) 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.
  - 7) Provide written responses to requests for information or clarification to City or Contractor.
- D. 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 – Preliminary Phase, B – Design 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.  
Coordinate with Dig Tess to have franchise utilities flagged along the route.  
Obtain permit from Dart to complete field surveys.
  - 2) Construction Staking  
Complete construction staking of the line as requested by City Inspector. Two trips are anticipated for this project.

- 3) Perform a geotechnical analysis of the proposed site utilizing Henley-Johnston & Associates of Dallas, Texas to determine subsurface conditions and soil design parameters. The geotechnical analysis shall include the following:
  - a. Subsurface exploration, including two bores ranging from 15 to 20 feet.
  - b. A geotechnical report will be furnished by the geotechnical engineer to present the results of the field and laboratory data, as well as analyses and recommendations. The data contained in the geotechnical report will be made available to contractors during the bidding process for general information purposes and for trench safety for the bore pit. The soils in this area are anticipated to be sandy.
- 4) Dart Flagman  
Arrange for and pay for a Railroad Flagman during field surveys.
- 5) Dart Permit  
Work with Dart to renew existing permit or prepare new permit. The existing permit is dated June 1, 2015.
- 6) 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.
- 7) Reproduction  
Printing of hard copy plan set for preliminary and final reviews by City, Dart, and Utilities. Print hard copy of documents for use during construction.
- 8) Sue  
Complete Level A subsurface investigation of existing utilities to identify horizontal and vertical location of known utilities flagged by Dig Tess and identified by the City.

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 as Attachment "A"
- C. The Consultant's Compensation Exhibit and Project Schedule, 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 \$ 77,350.00.

Invoices shall be submitted by cover letter from the project engineer. 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 attorney's 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 Engineer or his designee may approve changes in writing to the schedule as set forth in Attachment "B".
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 ("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 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](https://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.

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. 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.
- 35. 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.

- 36. 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.
- 37. 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** \_\_\_\_\_

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

By: \_\_\_\_\_  
Claire Powell, City Manager

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

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

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

Attest: \_\_\_\_\_  
Thomas Harris, III, City Secretary

Attest: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

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

**ATTACHMENT “A”**  
**INSURANCE REQUIREMENTS**  
**PROFESSIONAL SERVICES PROJECTS / CONSULTANTS**

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in the Vendor’s proposal.

**A. MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage “occurrence” form CG 00 01 (10 01). **“Claims Made” form is unacceptable except for professional liability.**
2. Workers’ Compensation insurance as required by the Labor Code of the State of Texas, including Employers’ Liability Insurance.
3. Automobile Liability – as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.
4. Professional Liability and/or Errors and Omissions Insurance.

**B. MINIMUM LIMITS OF INSURANCE**

Vendor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury, and property damage. Policy will include coverage for:
  - a. Premises – Operations
  - b. Broad Form Contractual Liability
  - c. Products and Completed Operations
  - d. Use of Contractors and Subcontractors
  - e. Personal Injury
  - f. Broad Form Property Damage
  - g. If applicable, Explosion Collapse and Underground (XCU) Coverage (when applicable, Fire Damage, Medical Expense).

***NOTE: The aggregate loss limit applies to each project.***

2. Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.
4. Professional Liability and/or Errors and Omissions - \$500,000 per occurrence - \$1,000,000 Aggregate.
5. Builders' Risk Insurance (as applicable) – Completed value form, insurance carried must equal the completed value of the structure.

**C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductible or self-insured retentions must be declared to and approved by the City.

**D. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
  - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied, or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.
  - b. The vendor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, and employees, Boards and Commissions or volunteers.
  - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.

2. Waiver of Subrogation – All Coverages except Professional Liability  
Each insurance policy required by this exhibit except Professional Liability shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.
3. Notice of Cancellation - All Coverages  
Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.
4. Professional Liability (applicable only to certified or licensed Engineers and or Architects)  
“Claims made” policy is acceptable coverage which must be maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City.

**E. ACCEPTABILITY OF INSURERS**

The City prefers that Insurance be placed with insurers with an A.M. Best’s rating of no less than **A-:VI, or, A or better** by Standard and Poors. Professional Liability carriers will need to be approved by the HR Director or designee.

**F. VERIFICATION OF COVERAGE**

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**G. HOLD HARMLESS AND INDEMNIFICATION**

**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.**

# ATTACHMENT “B”

## COMPENSATION

- The lump sum fee for ENGINEERING SERVICES (Items in Section #2) – A. B. & C. – Scope of Services, is as follows:

Main Street at Railroad Wastewater Line Replacement

|                                   |                     |
|-----------------------------------|---------------------|
| Design Services A & B .....       | \$ 29,800.00        |
| Construction Administration ..... | <u>\$ 14,000.00</u> |

**Engineering Subtotal: \$ 43,800.00**

- For SPECIAL SERVICES (those listed separately in Section II. - D, and not part of the Engineering Services), for per diem compensation, is salary cost times a factor of 2.40 is proposed for these services, with direct non-payroll costs reimbursed at 1.15 times actual cost. Survey Crew at \$195.00 per hour.
- It is reasonable to estimate the time and costs involved and apply appropriate multipliers.

|                                      |                         | <b>Main Street at RR<br/>Wastewater Line</b> |
|--------------------------------------|-------------------------|--|
| <u>Additional Services</u>           |                         |  |
| 1.                                   | Survey for Design       | \$ 3,200.00                                  |
| 2.                                   | Construction Staking    | \$ 1,800.00                                  |
| 3.                                   | Geotechnical            | \$ 6,050.00                                  |
| 4.                                   | Dart Flagman for Survey | \$ 2,500.00                                  |
| 5.                                   | Dart Permit             | \$ 2,500.00                                  |
| 6.                                   | Prepare Record Drawings | \$ 1,500.00                                  |
| 7.                                   | Reproduction            | \$ 1,000.00                                  |
| 8.                                   | Sue                     | \$ 15,000.00                                 |
| <b>Additional Services Subtotal:</b> |                         | <b>\$ 33,550.00</b>                          |

The Base maximum overall fee of **\$77,350.00** established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

Opinion of Probable Construction Cost: **\$77,350.00**.

**COMPLETION SCHEDULE Need an updated schedule**

(i)

| <b>Project Milestone</b>                         | <b>Main Street at RR Wastewater Line</b> |
|--|--|
| Notice to Proceed                                | January 20, 2025                         |
| Begin Field Surveys                              | February 3, 2025                         |
| 60% Plans to City for Review (2 Weeks)           | April 25, 2025                           |
| 90% Plans and Specs to City for Review (2 Weeks) | June 27, 2025                            |
| Complete Final Plans                             | August 29, 2025                          |
| Start Bidding Phase                              | September 2025                           |
| Award Contract                                   | November 2025                            |
| Complete Construction                            | April 2026                               |