

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**Prairie Creek Wastewater Treatment Plant II Aeration Basin Expansion**  
**Preconstruction and Construction Phase Services**

The City of Lewisville, Texas (the "City"), hereby engages OCMI, Inc., a California corporation authorized to do business in Texas (the "Consultant"), to perform professional services in connection with Prairie Creek Wastewater Treatment Plant II Aeration Basin Expansion (the "Project").

1. **PROJECT.** The Project is described as follows:
  - A. **PCWWTP Aeration Basin Expansion:** Expansion of the aeration basins at the Prairie Creek WTP. This will be a CMAR construction.
  
2. **SCOPE OF SERVICES.**
  - A. **Pre-Construction Period Services:** See Attachment B
  - B. **Construction Period Services:** See Attachment B
  - C. **Inspection Services:** See Attachment B
  
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 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.

4. **COMPENSATION.** The total fee for services provided under this Agreement shall not exceed \$908,062.00.

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. Insurance certificate 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, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'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 CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE 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 CONSULTANT 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 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. **TIME OF COMPLETION.** 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.
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:

OCMI, Inc.  
8851 Research Dr.  
Irvine, CA 92618

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](http://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 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 (2) 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.

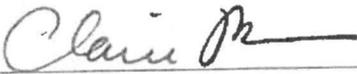
This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code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

33. **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 Consultant, 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.
34. **CLOSURE.** By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

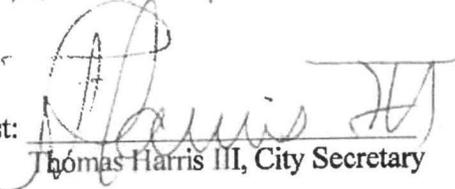
**(SIGNATURES ON FOLLOWING PAGE)**

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement on the 1<sup>ST</sup> day of APRIL, 2024.

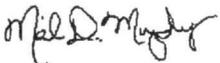
**CITY OF LEWISVILLE, TEXAS**  
Approved by the Lewisville City  
Council APRIL 1, 2024

By:   
Claire Powell, City Manager

Date: APRIL 1, 2024

Attest:   
Thomas Harris III, City Secretary

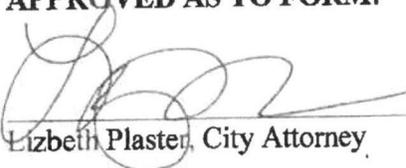
**CONSULTANT**  
OCMI, Inc.

By:   
Neil Murphy, President

Date: 3/15/24

Attest: \_\_\_\_\_  
Kyle Veater, Vice President

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

**APPROVED AS TO FORM:**  
  
Elizabeth Plaster, City Attorney

## **Attachment A**

### **INSURANCE REQUIREMENTS** **PROFESSIONAL SERVICES PROJECTS/CONSULTANTS**

Services for non-construction projects. Consultants or other professionals including: Accountants, Attorneys, Veterinarians, and Medical Doctors.

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 bid.

#### **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 Insurer, and / or Errors and Omissions.

#### **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. Personal Injury
  - e. Broad Form Property Damage
  - f. If applicable, Explosion Collapse and Underground (XCU) Coverage, Fire Damage, and 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.

**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/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. The coverage shall include defense of claims against the City as additional insured.
- 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, 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 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 and / or Errors and Omissions  
"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/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 CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE 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 CONSULTANT/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 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.



2100 N. Greenville Ave.  
Suite 1150  
Richardson, TX 75082

469.431.0571 t  
ocmi.com

15 February 2024

Kelly Rouse & Roshan Chaudhary  
Assistant Director of Public Services, City of Lewisville  
1100 N. Kealy, Suite D  
Lewisville, TX 75057

Regarding: Prairie Creek WWTP Aeration Basin Expansion  
Pre-Construction and Construction Period Services

Mr. Rouse and Mr. Chaudhary:

Thank you for requesting a scope of work from OCMI to support the City of Lewisville's Prairie Creek Waste Water Treatment Plant (PCWWTP) Aeration Basin expansion project. The following scope of services represents a number of options available to the City by way of OCMI's Cost Management and Project Controls contract with the city. As previously discussed on our project review call on 03 MAY 2023, these scope items have been organized into different task orders spanning procurement pre-construction, and construction period services.

**OCMI's Responsibilities**

OCMI proposes to be the Owner's technical project representative, providing project management services to the City of Lewisville. We propose one part-time senior level Construction Manager/Project Manager (CM/PM) to carry out the owner representation services with periodic supplemental office staff assistance for cost and schedule services discussed herein.

**Roles & Responsibilities**

Below is a brief outline of the primary roles and responsibilities of the various professional disciplines called out in our fee proposal.

Project Executive: Primary Executive with overall responsibility for the contract and services being provided by OCMI. Project Executive will provide regular input and remain informed of project progress throughout the project. When necessary, Project Executive will be available to provide expertise to the project team and ensure resource allocation is prioritized for this project.

Contract Manager: Day-to-day point of contact for the City of Lewisville and OCMI project team. The Contract Manager will be the primary contact for City of Lewisville and be responsible for supporting OCMI team member onboarding, coordination, and support. Invoicing and contract actions will be primarily coordinated and completed by the Contract Manager.



2100 N. Greenville Ave.  
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469.431.0571 t  
ocmi.com

Construction Manager / Project Manager: The CM/PM will be the lead technical project support personnel for the PCWWTP project during the pre-construction (pre-con) and construction phase. They will be engaged throughout pre-con to support the City in project setup, coordination of project team members, submittal & deliverable tracking, and GMP negotiation. During construction, the CM/PM will continue on and lead overall management and coordination of the project team in support of the City. They will be on-site at the PCWWTP three (3) days per week (on average) observing progress, coordinating inspections, and reporting back to the City. Additional responsibilities will include RFI & submittal coordination, budget monitoring and reporting, OAC meeting leadership, change order management, and pay application review management.

Cost Estimating Manager / Senior Cost Estimator / Estimator: The cost management roles outlined represent OCMI's team of cost estimators and managers. These personnel will lead development of an independent cost estimate at one or more design milestones, which will in turn be used to support GMP negotiations with the CMAR. During construction, OCMI cost management personnel will support change order proposal review and negotiation to ensure fair and reasonable pricing is being received by the city.

Senior Scheduler: OCMI's Senior Schedulers will work closely with the CM/PM and have primary responsibility for the review of the CMAR's baseline schedule for reliability and compliance with the contract/specification requirements. During construction, the Senior Schedulers will review CMAR-provided schedule updates for accuracy, fidelity, and contract compliance as part of the pay application review process. As needed, the Senior Schedulers will provide time impact analysis related to potential change orders to ensure that any change orders for time are validated or refuted as appropriate.

#### **Limits of Authority**

We anticipate that during construction period services, OCMI's CM/PM would have authority to draft project administration correspondence for distribution amongst City of Lewisville, the design team, CMAR, inspectors, and testing laboratories. OCMI's CM/PM would not have signatory authority, nor the authority to enter into any contracts, monetary obligations, or to make changes to any of the contracts or agreements on behalf of the city.

#### **Description of Services by Phase and Activity**

##### **I. Pre-Construction Phase**

- a. GMP Validation – The OCMI cost team will develop an independent an independent cost estimate to be used for comparative review of the CMAR's GMP proposal to validate costs and assumptions. This process will include review of with the CMAR to derive a complete GMP which fully covers scope at an



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appropriate value for the City.

- b. Pre-Construction Coordination – OCMI will review and advise on pre-construction documentation generated by the CMAR including logistics plans, preliminary schedules, and procurement submittals.

## II. Construction Period Services

- a. Master Project Schedule – OCMI will review current planned logistics and phasing approaches for the project and develop a master project for use in coordinating all project team members including design, construction, agency, phasing, third party testing & regulatory reviews.
- b. Construction Schedule Management – Review and monitor overall project and construction schedules.
  - i. OCMI's scheduler will review, analyze, and comment on the CMAR's baseline constructions scheduling, including procurement activities, submittals, phasing long lead items, contract milestones, schedule logic and durations. A full schedule report and narrative will be provided and include graphical illustrations and tabular reports. A series of project health checks to analyze float, critical paths, overall risk & resiliency, trade stacking use of non-industry standard techniques, and other pertinent indicators will also be included.
  - ii. OCMI's schedule will review the contractor's monthly schedule updates for accuracy, feasibility, delay risks, and contractual compliance.
- c. Budget Monitoring – Monitor overall budget and advise City of Lewisville of any trends that might affect cost effective project completion.
  - i. OCMI's project manager will review and comment on change orders submitted by the CMAR and consultants. If needed, OCMI's project manager will work with OCMI's in-house cost estimators and the design team to produce comparison studies or estimates to evaluate change orders.
- d. Meetings – OCMI's PM will attend weekly and special construction meetings to evaluate progress, quality, budget, and other items for which action may be needed. Weekly meeting to be run by OCMI PM, pending City of Lewisville's preference.
- e. RFI & Submittals – OCMI will create and maintain RFI & Submittal logs. OCMI PM will direct RFIs and submittals as appropriate to owner and design team RFIs and ensure timely addressment. Document control system will be developed in accordance with City of Lewisville's preferred system(s) and software(s) and/or preferred process.



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- f. Change Orders – OCMI’s PM will evaluate and make recommendations to the City of Lewisville regarding proposed contract changes and resolution of all claims. As directed by City of Lewisville, OCMI will participate in or conduct negotiations to resolve claims or disputes.
- g. Pay Applications – OCMI PM will coordinate the CMAR pay application process and review pencil copy each month, providing recommendation and comments to City of Lewisville for approval or rejection.
- h. Coordination – OCMI PM will coordinate final acceptance, inspection, commissioning, testing & balancing, and scheduling of preliminary and final system start-ups. This includes monitoring completion and turnover of operations and maintenance data as well as record drawings (as-builts).
- i. Closeout – OCMI PM will complete and transmit the Project Closeout Checklist to the City of Lewisville.

### **III. As Needed Inspector**

- a. Field Inspection – OCMI can provide, at the City’s discretion, field inspections of work in progress and work complete as additional due diligence. This effort includes:
  - i. Provision of an as-needed Inspector with specific WWTP construction and operation expertise.
  - ii. Lead Inspector will also inspect overall construction work in-progress for conformance with contract documents and specifications.
  - iii. The Lead Inspector will submit Daily Reports for each day on site, documenting site condition observations, potential risk items, and items of non-compliance.

*(see next page for fee proposal)*



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 Suite 1150  
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469.431.0571 t  
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**FEE PROPOSAL – Base Services**

SOW Item #	I. Pre-Construction Services	Weeks	Hours Per	Total Hours	Rate	Subtotal
I.a.	Independent Estimate, Reconciliation					
	Construction Manager/Project Manager	1	8	8	\$ 167.00	\$ 1,336.00
	Project Executive	1	12	12	\$ 235.00	\$ 2,820.00
	Contract Manager	1	2	2	\$ 192.00	\$ 384.00
	Cost Estimating Manager	1	20	20	\$ 192.00	\$ 3,840.00
	Senior Cost Estimator	2	36	72	\$ 182.00	\$ 13,104.00
	Cost Estimator	2	60	120	\$ 152.00	\$ 18,240.00
	<b>Subtotal</b>					<b>\$ 39,724.00</b>
I.b.	Pre-Construction Coordination					
	Construction Manager/Project Manager	36	8	288	\$ 167.00	\$ 48,096.00
	Project Executive	36	0.5	18	\$ 235.00	\$ 4,230.00
	Contract Manager	36	2	72	\$ 192.00	\$ 13,824.00
	<b>Subtotal</b>					<b>\$ 66,150.00</b>
<b>Pre-Construction Services, Total</b>						<b>\$ 105,874.00</b>
SOW Item #	II. Construction Period Services	Weeks	Hours Per	Total Hours	Rate	Subtotal
II.a.	Master Project Schedule					
	Senior Scheduler	1	40	40	\$ 182.00	\$ 7,280.00
	Construction Manager/Project Manager	1	4	4	\$ 167.00	\$ 668.00
	Project Executive	1	4	4	\$ 235.00	\$ 940.00
	Contract Manager	1	1	1	\$ 192.00	\$ 192.00
	<b>Subtotal</b>					<b>\$ 9,080.00</b>
II.b.	Construction Schedule Management					
	Senior Scheduler (Baseline Schedule)	1.5	40	60	\$ 182.00	\$ 10,920.00
	Senior Scheduler (Monthly Updates)	72	3	216	\$ 182.00	\$ 39,312.00
	<b>Subtotal</b>					<b>\$ 50,232.00</b>
II.c - II.i.	Full-Time CM/PM					
	Construction Manager/Project Manager	86	40	3440	\$ 167.00	\$ 574,480.00
	Senior Cost Estimator	86	1	86	\$ 182.00	\$ 15,652.00
	Contract Manager	86	1	86	\$ 192.00	\$ 16,512.00
	Project Executive	86	0.5	43	\$ 235.00	\$ 10,105.00
	<b>Subtotal</b>					<b>\$ 616,749.00</b>
<b>Construction Period Services, Total</b>						<b>\$ 781,935.00</b>



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SOW Item #	III. Inspection Services	Weeks	Hours Per	Total Hours	Rate	Subtotal
	III.a. Part-Time Inspector Inspector & WWTP SME	43	3	129	\$ 157.00	\$ 20,253.00
<b>Inspection Services, Total</b>						<b>\$ 20,253.00</b>

**ASSUMPTIONS:**

1. GMP Reconciliation: we assume the GMP will be developed by the CMAR and reconciled with OCMI at either the Design Development (60%) or Construction Documents (90%) design phase.
2. Construction Period Services assumes support through provision of closeout documentation.
3. Construction Period Services fee proposal is based on an estimated construction duration of 20 months at 4.3 weeks per month. Should total baseline construction duration differ, OCMI's fee would be modified accordingly.
4. Assumes provisions for on-site office and work station accommodations, including internet access, will be provided by City or CMAR.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Veater', is written over a light grey rectangular background.

Kyle Veater  
Vice President  
kveater@ocmi.com  
469.431.0571