

Monday, April 1, 2024	6:30 PM	Lewisville City Hall

Anyone wishing to submit comments prior to the meeting may do so through e-comments. To access e-comments, go to https://cityoflewisville.legistar.com/Calendar.aspx and utilize the e-comments link located to the far right hand side of the line containing this meeting details and agenda. E-comments will be accepted until 5:30 p.m. prior to the meeting.

### Call to Order and Announce Quorum is Present

### Workshop Session - 6:30 P.M.

\*\*Items discussed during Workshop Session may be continued during the Regular Session if time does not permit holding or completing discussion of the item during Workshop Session.

- A. Discussion of Regular Agenda Items and Consent Agenda Items
- **B.** <u>Artist Recommendation for Work of Art at Lewisville Public Library</u>
- C. Southern Gateway Update and Texas State Technical College Opportunity

### **Regular Session - 7:00 P.M.**

- A. Invocation Councilmember Green
- B. Pledge to the American and Texas Flags Councilmember Jones
- C. Proclamation
  - 1. <u>Proclamation Declaring the Month of April, 2024 as "Child Abuse</u> <u>Prevention Month."</u>
- **D. Presentation** 
  - 1. <u>Council Canines with Mayor Gilmore</u>

### **ADMINISTRATIVE COMMENTS:**

The Gene Carey Animal Shelter and Adoption Center is currently at capacity for large dogs. Mayor Gilmore will highlight a large dog for adoption. The adoption fee for this pet has been waived and all adoptions come with sterilization, microchip, rabies vaccination, and one year of City registration (if Lewisville resident). The Gene Carey Animal Shelter and Adoption Center is located at 995 E. Valley Ridge Blvd. Adoption Center hours are Tuesday from 12 p.m. - 7 p.m., Wednesday - Friday from 10 a.m. - 5 p.m., and Saturday from 12 p.m. - 5 p.m.

- 2. <u>Presentation of Various Awards Presented to the Lewisville Parks and</u> <u>Recreation Department and Partners at the 2024 TRAPS Annual Institute</u>
- 3. <u>Presentation of the First-Place Award for the 2024 NLC Cultural Diversity</u> <u>Awards (50,001-200,000 Population) Recognizing the Lung Thawng</u> <u>Sculpture Project.</u>

### E. Visitor/Citizens Forum

Speakers must address their comments to the Mayor rather than to individual Council members or staff. Speakers should speak clearly and state their name and address prior to beginning their remarks. Speakers will be allowed 5 minutes for testimony. Speakers making personal, impertinent, profane or slanderous remarks may be removed from the meeting. Unauthorized remarks from the audience, stamping of feet, whistles, yells, clapping, and similar demonstrations will not be permitted. In accordance with the Texas Open Meetings Act, the City Council is restricted from discussing or taking action on items not listed on the agenda. Action can only be taken at a future meeting.

### F. Consent Agenda

All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member or citizen so request. For a citizen to request removal of an item, a speaker card or e-comment must be filled out and submitted to the City Secretary.

- 1. <u>APPROVAL OF MINUTES: City Council Minutes of the March 18,</u> 2024, Workshop Session, and Regular Session.
- 2. <u>Approval of Change Order #3 with Belt Construction, Inc., in the</u> <u>Amount of \$315,827.97 for the Timber Creek Aerial Sewer Capital</u> <u>Project and Authorization for the City Manager, or Her Designee, to</u> <u>Execute the Change Order.</u>

### **ADMINISTRATIVE COMMENTS:**

The original project consists of replacing 7 aerial sanitary sewer crossings across Timber Creek at various locations within the City. The subject change order covers three separate items related to the subject project. The first item reflects additional costs associated with needing to redesign the proposed alignment of sewer crossing number 20 south of Bellaire Blvd adjacent to Fox Creek. The second item reflects additional cost associated with removing and replacing an old brick manhole in the median of Bellaire Blvd. with a new concrete manhole also associated with sewer crossing number 20. The third item reflects additional costs associated with removing and replacing a segment of storm sewer in addition to stabilizing the creek bank to accommodate construction of line 12 of the contract. The total amount of the change order is \$315,827.97, which is over the approved contingency. The change order also adds an additional 90 days to the contract. Funding is available in the Timber Creek Aerial Sewer capital project.

### **RECOMMENDATION:**

That the City Council approve the change order and authorize the City Manager, or her designee, to execute the change order as set forth in the caption above.

3. Approval of a Professional Services Agreement with OCMI, Inc., Richardson, TX, in the Amount of \$908,062 for Cost and Project Control Services for the Prairie Creek Wastewater Treatment Plant (PCWWTP) Aeration Basin Expansion Project; and Authorization for the City Manager, or her Designee, to Execute the Agreement.

### **ADMINISTRATIVE COMMENTS:**

During the design phase of the PCWWTP Aeration Basin expansion project, staff determined that the Construction Manager at Risk (CMAR) would be the most appropriate delivery method due to the project's schedule, the challenges with the procurement market, and anticipated operational challenges during construction. Due to the project's scale and complexity, OCMI Inc., has been selected to provide project control and cost management services, as well as, act as the owner's representative throughout the duration of this project.

### **<u>RECOMMENDATION</u>**:

That the City Council approve the agreement and authorize the City Manager, or her designee, to execute the agreement as set forth in the caption above.

4. Approval of a Construction Manager at Risk (CMAR) Pre-construction

Agreement with Archer Western Construction, LLC., Irving, Texas, in the Amount of \$449,814 for the Prairie Creek Wastewater Treatment Plant Aeration Basin Expansion Project; and Authorization for the City Manager, or her Designee, to Execute the Agreement.

### ADMINISTRATIVE COMMENTS:

In April 2022, the City Council approved the professional service agreement with a design consultant for design, bidding, and construction phase services for the expansion of the aeration basin and blower system improvements. The preliminary design report 30% deliverable indicated schedule constraints and procurement delays and staff has decided to utilize the Construction Manager at Risk (CMAR) delivery method to best mitigate these issues during construction. Through the RFQ/RFP process, staff has selected Archer Western as the CMAR for this project.

### **<u>RECOMMENDATION</u>**:

That the City Council approve the agreement and authorize the City Manager, or her designee, to execute the agreement as set forth in the caption above.

### G. Regular Hearing

5. Consideration of Acceptance of the Resignation of Lori Wilson, Place No. 4, on the Community Development Block Grant Advisory Committee; Declaring a Vacancy Exists for Place No. 4 on the Community Development Block Grant Advisory Committee; and an Appointment to Place No. 4 on the Community Development Block Grant Advisory Committee.

### ADMINISTRATIVE COMMENTS:

A resignation was received from Lori Wilson, Place No. 4, on the Community Development Block Grant Advisory Committee. Six (6) applications have been submitted meeting the qualifications for service in this position.

### **<u>RECOMMENDATION</u>**:

That the City Council accept the resignation, declare one vacancy and consider an appointment to the Community Development Block Grant Advisory Committee as set forth in the caption above.

**H. Reports** Reports about items of community interest regarding which no action will be taken.

### I. Return to Workshop Session if Necessary

1. <u>City Council and Staff Reports</u>

### J. Closed Session

In Accordance with Texas Government Code, Subchapter D,

- 1. Section 551.072 (Real Estate): Property Acquisition
- 2. Section 551.087 (Economic Development): Deliberation Regarding Economic Development Negotiations.
- 3. Section 551.074 (PERSONNEL):
  (a) City Secretary Thomas Harris III
- **K. Reconvene** into Regular Session and Consider Action, if Any, on Items Discussed in Closed Session.
- L. Adjournment

### NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS

The City will provide appropriate auxiliary aids and services, including sign language interpreters and assisted listening devices, whenever necessary to ensure effective communication with members of the public who have hearing, sight or speech impairments, unless doing so would result in a fundamental alteration of its programs or an undue financial burden. A person who requires an accommodation or auxiliary aid or service to participate in a City program, service or activity, should contact the sponsoring Department, or the Human Resource Department at 972-219-3450 or by Fax at 972-219-5005 as far in advance as possible but no later than 48 hours before the scheduled event.

The City Council reserves the right, upon an approved motion, to suspend the rules to consider business out of the posted order.

The City Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

The Texas Open Meetings Act, codified in Chapter 551 of the Texas Government Code, does not require an agenda posting where there is a gathering of a quorum of the City Council at a social function unrelated to the public business that is conducted by the City Council, or the attendance by a quorum of the City Council at a regional, state or national convention or workshop, ceremonial event or press conference if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event or press conference. The City Secretary's Office may occasionally post agendas for social functions, conventions, workshops, ceremonial events or press conferences; however, there is no legal requirement to do so and in the event a social function, convention, workshop, ceremonial event or press conference is not posted by the City Secretary's Office, nothing shall preclude a quorum of the City Council from gathering as long as "deliberations" within the meaning of the Texas Open Meetings Act do not occur. I do hereby certify that the above notice of meeting of the City of Lewisville City Council was posted at City Hall, City of Lewisville, Texas in compliance with Chapter 551, Texas Government Code on March 28, 2024, 2024 at 5:00 PM.

Jennifer Malone, Assistant City Secretary

## Public Art for the Lewisville Public Library



## Background and Budget for this project

- The evaluation committee was looking for a work of art to add indoors at the Library. The area identified for this commission was the brick column near the stairway leading up to level 2. The evaluation committee wanted this work to be an installation piece, sculptural in nature, that would wrap around or climb the tall brick column.
- Also, they were looking a work that would provide a visually striking component to the library that will inspire wonder, draw the eye upward, and excite engagement.
- Materials were not specified other than we would require ones proven to have high-durability and low-maintenance, especially if installed at a touchable height, while being safely and securely installed on the brick façade of the column. The incorporation of lighted elements with the artwork was desired, but not required.
- This project meets the goal of the Public Art Master Plan to put art into more municipal facilities, and the library was highlighted as a strong candidate for an installation.
- Funding Sources
  - Total Budget: \$85,000
    - Public Art CIP: \$80,000, as presented by the Arts Advisory Board FY23 Public Art Workplan and funded in the FY23 budget.
    - Gift from the Friends of the Lewisville Public Library: \$5,000
      - The Friends of the Library generously offered to contribute \$5,000 toward this project to help extend the budget. The Friends have donated all the other works of art that can be seen at the Library including "Alphabet Chair", "Pages of Knowledge" and "Togetherness".
- Budget Breakdown
  - Artist budget: \$75,000
  - Administrative and site modification needs contingency: \$10,000







# Details about the Evaluation Committee and RFQ Results

- An evaluation committee of 11 people was formed to review artist submissions
  - Arts Advisory Board members: Sarah Hicks, Michael Gortz, Christi Martin
  - Library Board members: Jennifer Marvel, Kay Stephenson, Raquel Maloney
  - City Staff: Carolyn Booker, Kelly Brouillard, Renee Kirchner, Shannon Fernandez, Denise Helbing
  - Additional Staff: Chris Presley also joined the committee for the artist interviews to ask questions from a facilities standpoint.
- Call for Artists
  - A call was published on the highly used website CaFE.org (Call for Entry)
  - A record 241 applications were received for this call
- Finalist selection
  - Based on their experience and application materials, three finalists were selected and invited to create a proposal for this project.
    - Peter Hite (Houston, Texas)
    - Area C Projects, Erik Carlson and Erica Carpenter (Providence, Rhode Island)
    - Michele Gutlove (Natick, Massachusetts)
  - The evaluation committee's choice of artist was brought to the Arts Advisory Board at its Feb. 20 meeting. The Arts Advisory Board reviewed the proposals and voted to recommend that the City Council move forward to contract with the artist selected by the evaluation committee.

## **Recommend Finalist**

The evaluation committee and the Arts Advisory Board are recommending the proposal from Michele Gutlove be approved for this commission.

### **About Michele:**

Michele Gutlove is a glass artist and architect. She has been working with glass for over twenty years. In her own words: "I discovered glass fusing and my watercolor painting morphed into three-dimensional transparent sculptures... Molten glass, fluidly dynamic then solidly permanent, allows layering of textures with a full spectrum palette, as opaque as obsidian, as transparent as air, or as reflective as a lake."

Michele also has a personal belief that libraries are fundamental for a free society. She has stated, "in the age of ubiquitous digital information, the physical library is most relevant as a compelling destination in the community."

Michele has over 50 public art commissions installed across the United States and abroad in Canada and Finland and on in progress in Iceland.

### **Notable Works:**



"Internal Energy" Fort Lewis College, Durango, Colorado



"Water of Life" Maker's Mark Distillery, Loretto, KY



"Full Bloom" Ennis Welcome Center, Ennis, TX

# Specialty Glass and Inspiration

- Michele has developed a specialty glaze for glass that has unique reflective properties.
- Michele's proposal is greatly inspired by Lewisville Lake and the native prairies and flora of the region.
- The proposed work will be an impressionistic interpretation of the shape of the lake, grounded by the prairie lands.
- The installation will also include suspended pieces of glass that represent water flowing off the column, but could also be interpreted as air.



Optical Musings



## Images from Michele's proposal our project.







## Satellite Installation

Michele often includes a small satellite installation with her larger commissions to extend the experience with the art and offer something unexpected elsewhere in the facility.

She is considering this wall on level 2 of the Library for ours.

She will also provide one extra piece of glass to keep at the reference desk for Library patrons to be able to touch and hold.





## Questions?

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## SOUTHERN GATEWAY UPDATE AND TEXAS STATE TECHNICAL COLLEGE OPPORTUNITY

City Council Workshop 04.01.24

## BACKGROUND

- Founded in 1965, Texas State Technical College (TSTC) is a coeducational two-year institution offering courses in technological vocational education, emphasizing these programs that are not commonly offered by public junior colleges.
- They currently have 11 campus locations: Abilene, Breckenridge, Brownwood, East Williamson County, Fort Bend County, Harlingen, Marshall, New Braunfels, North Texas (Red Oak), Sweetwater, and Waco.
- Some of the courses offered through their Workforce Training & Continuing Education program:
  - Aviation Structural Assembly
  - Carpentry
  - Robotics & Industrial Controls Technology
  - Soldering Fundamentals
  - Wind Energy Technology
  - Forklift Training
  - Fiber Optic Broadband



# **LEGISLATIVE HISTORY**

- TSTC is authorized to serve the State of Texas through excellence in instruction, public service, faculty and manpower research, and economic development, pursuant to Chapter 135 of the Education Code (Code).
- Approved locations are provided for in the Code, so any new locations must be approved by legislation.
- HB 3287 authorized TSTC to locate in Denton County, effective June 10, 2023.
  - Other authorized counties: City of Waco in McLennan County, Cameron County, West Texas (4 counties), Harrison County, McLennan County, Fort Bend County, Ellis County, Comal County and Guadalupe County, Williamson County.

• Next legislative agenda, a bill pattern is needed for operational funding.

## TUITION

Based on a student enrolling in 15 credits in both Spring and Fall. Tuition is broken down into 4 tiers depending on program of study

## 2023-2024 Cost Of Attending

	Resident Living On Campus	Resident Living On Campus (with dependents)	Resident Living Off Campus	Resident Living with Family	Nonresident Living On Campus	Nonresident Living On Campus (with dependents)	Nonresident Living Off Campus	Nonresident Living with family
Tuition & Fees1	\$7,192	\$7,192	\$7,192	\$7,192	\$11,842	\$11,842	\$11,842	\$11,842
Housing & Meals2	\$8,006	\$9,852	\$12,800	\$3,600	\$8,006	\$9,852	\$12,800	\$3,600
Books & Supplies3	\$1,464	\$1,464	\$1,464	\$1,464	\$1,464	\$1,464	\$1,464	\$1,464
Transportation	\$1,636	\$1,636	\$2,172	\$2,172	\$1,636	\$1,636	\$2,172	\$2,172
Other/Miscellaneous	\$2,244	\$2,244	\$2,244	\$2,244	\$2,244	\$2,244	\$2,244	\$2,244
Total Cost of Attendance	\$20,542	\$22,388	\$25,872	\$16,672	\$25,192	\$27,038	\$30,522	\$21,322

- Money-Back Guarantee (MBG) program offers tuition reimbursement to eligible graduates. Graduates who have met all MBG criteria will be eligible for tuition reimbursement if they are unable to secure employment in their chosen field (related to the program they graduated from) within six months after graduating from TSTC.
- Scholarships are awards that do not have to be repaid. They are available to students who qualify based on financial need and academic standing.
- Internships and/or apprenticeships from employers. Some employers may offer tuition reimbursement.

## FUNDING

- TSTC is not funded by local taxes. TSTC's primary sources of operating revenues are tuition/fees and federal, state, and local grants.
- Denton County does not have a community college tax; therefore, state funds are needed to create the workforce.
- TSTC is the only college in Texas that operates on a 100% outcomes-based funding formula. With its "Returned-Value Funding Formula".
  - TSTC is not funded on contact hours, but rather on the employment outcomes realized by our students. The college relies on the placement of its graduates in great-paying jobs to receive funding from the State.



# SITE QUALIFICATIONS

- 100–150 acres
  Green field
  On a major throughfare
  \$100M
  - Denton County



# SOUTHERN GATEWAY HISTORY

The Southern Gateway Plan was developed in 2014 and is a development guide for a 325 acre site located on the south end of Lewisville, dividing the area into five distinct sub districts with an overall focus on mixed-use development.

## **MULTIUSE CENTER**

	LAND USE	FOOTPRINT (SF)	STORY (MIN)	TOTAL (SF)	PARKING
A	OFFICE	32,500	2	65,000	390
B	OFFICE	60,600	2	121,200	995
C	OFFICE	22,000	2	44,000	330
D	HOTEL & CONF. CENTER	52,000	4	208,000	1,250
E	INCUBATORS (3) NATURE CENTER	9,000	1	9,000	50
F	OFFICE	12.500	2	25,000	150
TOTAL				472,200	2,835



## LEWISVILLE // MASTER PLAN

MARCH 17, 2015 T B G

# SOUTHERN GATEWAY PROPERTY HISTORY

• Previously zone light industrial and agriculture open space and rezoned to a mix used district (MU-90).

- Over the past 10 years, a variety proposals have been considered, including various combinations of entertainment venues, sports venues, hotels, resorts, professional office uses, and conference centers.
- Huffines originally was on board with the adopted vision and their primary interest was multi-family (Hebron 121) with the remaining property being commercial.
- However, Covid–19 drastically changed market demand, the Huffines now desire more multi-family development on their portion of the site. After discussions with staff, Huffines is open to a mixed use concept; however, they would like to see an immediate development time frame opposed to a long-term development scenario.





## TIRZ #2 MAP

# The site is located in TIRZ #2.







## The View at Lakeside

Hebron 121 Station







# TIRZ #2 FINANCIALS

- City and County obligate 80% of the increment captured by the district to TIRZ 2 through 2038.
- Currently under performing and not generating as much value as anticipated.
- We are paying the developer off early by allocating the city's 50% of revenue to repayment obligations (estimated pay off is 2026-2027).





FY2	2023-2024	ed)			
				<b>\$</b> 1	,333,213.44
0 50%				\$	666,606.72
oper				\$	666,606.72
eveloper				\$(1	,300,000.00)
eveloper				\$	-
ises				\$	(10,000.00)
l Equity (	09.30.202	4)		\$	280,874.13



# HOUSING AT CURRENT CAMPUSES

Unit Efficient Dorms Rate: \$900–1385 per semester

Apartments (2 bedroom/1 bath) Rate: \$830-\$1265 per semester / \$744 Married student/Family per month

Apartments (2 bedroom) Rate: \$1585-\$1665 per semester

Apartments (4 bedroom) Rate: \$1170-\$1229 per semester

Waco Campus - Griffith Hall (1 bed/2 bath; 2 bed/2 bath; 2 bed/1 bath) Rate: \$2280-\$2800 per semester

Waco Campus - Brazos Community Family Housing • 2 bed duplex Rate: \$660 per month for FT student • 3 bed duplex Rate: \$725 per month for FT student • 3 bed single Rate: \$775 per month for FT student





## HOUSING AVAILABILITY



Current housing options within close proximity to the site, and all 3 DCTA stations – Hebron 121, Old Town, Highland Village/Lake Lewisville include: multi-family, single family, townhomes, and condos with various affordable housing options.

Map inc housing

Map includes traditional MF housing and LIHTC MF

# TSTC FACTS – ENROLLMENT

On average, students will travel 45 minutes to a campus.

2023 fall enrollment not including dual credit or workforce training:

- Abilene = 308
- Ft Bend County = 744
- Harlingen = 2,376
- Marshall = 403
- Waco = 2,496



## **TSTC FACTS -DONATIONS AND JOB CREATION**

Communities who donated funds are typically within the county in which the campus is located.

Approximately 60 jobs created onsite faculty and staff, with 20-30 additional jobs that have statewide oversight.

Local Government Links

Home > Our Community > Cities & Communities

## **CITIES & COMMUNITIES**

### Local Government Links

Find links and contact information for Texas towns' and cities' fire departments, chambers of commerce, and libraries.

- Argyle
- Aubrey
- Bartonville
- Carrollton
- Celina
- Coppell
- Copper Canyon
- Corinth
- Cross Roads
- Dallas
- Denton
- Dish
- Double Oak
- Flower Mound

- Fort Worth
- Frisco
- Grapevine
- Hackberry
- Hickory Creek
- Highland Village
- Justin
- Krugerville
- Krum
- Lake Dallas
- Lakewood Village
- Lewisville
- Little Elm
- Northlake

- Oak Point
- Pilot Point
- Plano
- Ponder
- Prosper
- Providence Village
- Roanoke
- Sanger
- Shady Shores
- Southlake
- The Colony
- Trophy Club
- Westlake

# TSTC FACTS – PLACEMENT

Job placements are usually within close proximity to the campus. Programs are tailored to the needs of the business community.

## By the numbers

Our graduates work for companies all over Texas and beyond, and we have the numbers to prove it.

1,597

jobs earned by TSTC graduates in FY 2023.

1,052

companies hiring TSTC graduates.

1,781

number of jobs posted in hireTSTC.



## PROXIMITY TO EMPLOYERS

Current employer industries include:



- transportation and logistics
- communication and electrical wire
  - distribution
- aeorspace manufacturing and
  - distribution
- food services
- construction equipment design and manufacturing
- HVAC and cooling system
  - manufacturing and distribution
- medical lab services
- medical equipment manufacturing

## Manufacturing

The Dallas-Fort Worth region is often associated with major headquarters, logistics, distribution, and supply chain operations. But people might not realize that the manufacturing industry makes up seven percent of the regional economy by employment.

DFW has more manufacturing activity than any other metro area in Texas. The size and scope of operations create a diverse manufacturing landscape across many sectors. Goods produced in DFW range from boots and clothing to bricks, steel, plastics, SUVs, and aerospace components.

Just a few of the large manufacturing operations in DFW include the General Motors Assembly Plant in Arlington, Lockheed Martin in Fort Worth, and Texas Instruments in Dallas.

## Share of Statewide Manufacturing **Employment** by Metro





Legend:

Occupation Jobs | Median hourly earnings



Industrial Engineers 8,633 | \$48.05

Mechanical Engineers 5,122 | \$47.76

Industrial Machinery Mechanics 10,769 | \$28.58

**First-Line Supervisors** of Production and **Operating Workers** 18,092 | \$29.87

2024

2024

### **Major Manufacturing Operations in Dallas-Fort Worth**

- 1 Airbus Helicopter
- 2 Alcon Laboratories
- 3 American Leather
- 4 Bell Helicopter
- 5 Bombardier U.S. Aerostructures
- 6 Canadian Solar
- 7 Coca-Cola Southwest Beverages
- 8 Dal-Tile Corporation
- 9 DrinkPak
- 10 Dynacraft
- 11 ESAB
- 12 Evolve Biologics
- 13 TreeHouse
- 14 Frito-Lay
- 15 Fujitsu Network Communications
- 16 General Motors
- 17 Gerdau
- 18 Keurig Dr Pepper
- 19 KraftHeinz
- 20 L3Harris
- 21 LG Electronics
- 22 Lennox International
- 23 Lockheed Martin Aeronautics
- 24 Lockheed Martin Missiles & Fire Control
- 25 Louis Vuitton
- 26 Madix
- 27 Mary Kay
- 28 Miller Coors
- 29 MP Materials
- 30 Peterbilt Motors
- 31 Poly-America
- 32 Pratt Industries
- 33 Qorvo
- 34 Raytheon, an RTX Business
- 35 Safran
- 36 Siemens
- 37 Smith & Nephew
- 38 Solar Turbines
- 39 SunOpta
- 40 Texas Instruments
- 41 Trina Solar
- 42 Wabtech



Miscellaneous Assemblers and Fabricators 37,347 | \$17.17





103

## BENEFITS

- Although the TSTC campus would be non taxable, there are various intangible benefits:
  - Skilled worker supporting industries within and outside of Lewisville.
  - Attractive workforce (housing, child care, education/skills, near transit) means spending less in incentives.
  - Business retention
  - Proximity to the mall and restaurants, supporting local business and increase in sales tax
  - Landfill is closing and will convert to park space
  - DCTA ridership potential increase
- Work in conjunction with with partners such as the Lewisville Area Chamber of Commerce, Lewisville Independent School District, Workforce Solutions for North Texas, and various non-profit organizations to help support business and to provide workforce development.



## FEEDBACK AND NEXT STEPS

 TSTC would be vastly different from the current plan. Would the city council like for us to pursue TSTC?

• If so, the following are next steps: City will present this site to TSTC Reengage the Huffines Consortium of stakeholders



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# EDBACK


### Proclamation

### BY THE

### City Council of the City of Lewisville

*WHEREAS*, there were 550 children affected by abuse and neglect served by CASA of Denton County in 2023; and

*WHEREAS,* more than 240 volunteers from Denton County work with the organization annually by giving their time to ensure safety for our community's children; and

*WHEREAS*, our youngest residents need and deserve to be surrounded by love and positive relationships, while being given guidance and protection; and

*WHEREAS*, the City of Lewisville commends the work of CASA of Denton County volunteers and staff in advocating for children during this difficult time in their lives.

*NOW*, *THEREFORE*, I TJ Gilmore, Mayor of the City of Lewisville, Texas and on behalf of the City Council, do hereby recognize the month of **April 2024** as:

### CHILD ABUSE PREVENTION MONTH

In Lewisville, Texas, and urge all residents to observe the occasion with appropriate ceremonies and activities.

TJ Gilmore, Mayor City of Lewisville

### LEWISVILLE CITY COUNCIL

### **REGULAR SESSION**

#### March 18, 2024

#### 6:30 P.M.

#### Present:

TJ Gilmore, Mayor

#### **Council Members:**

William Meridith, Mayor Pro Tem Patrick Kelly, Deputy Mayor Pro Tem Bob Troyer Ronni Cade Brandon Jones Kristin Green

#### City Staff:

Claire Powell, City Manager Gina McGrath, Deputy City Manager Shante Akafia, Assistant City Manager Jim Proce, Assistant City Manager Lizbeth Plaster, City Attorney Lauren Crawford, Deputy City Attorney Thomas Harris III, City Secretary Jennifer Malone, Assistant City Secretary

With a quorum of the Council Members present, the workshop session of the Lewisville City Council was called to order by Mayor Gilmore at 6:30 p.m. on Monday, March 18, 2024, in the City Council Conference Room of Lewisville City Hall, 151 West Church Street, Lewisville, Texas. City Department Heads were also in attendance.

#### WORKSHOP SESSION

#### Discussion of Regular Agenda Items and Consent Agenda Items

(Agenda Item A)

Mayor Gilmore led a discussion of regular agenda items and consent agenda items and received questions and comments from City Council and City staff.

### **Review Annual Comprehensive Financial Report & Popular Annual Financial Report** for FY2023

At the request of Mayor Gilmore, Director of Finance David Erb and John DeBurro, Partner, Weaver and Tidwell presented information regarding Review Annual Comprehensive Financial Report & Popular Annual Financial Report for FY2023, answered questions, and comments from the City Council. The City Manager received questions, comments, and direction from the Mayor and City Council.

### **REGULAR SESSION**

With a quorum of the Council Members present, the regular session of the Lewisville City Council was called to order by Mayor Gilmore at 7:01 p.m. on Monday, March 18, 2024.

#### Invocation

Mayor Gilmore gave the invocation.

#### **Pledge to the American and Texas Flags**

At the request of Mayor Gilmore, Councilmember Green gave the pledge to the United States and Texas flags.

#### **Council Canines with Mayor Gilmore**

The Gene Carey Animal Shelter and Adoption Center is currently at capacity for large dogs. Mayor Gilmore will highlight a large dog for adoption. The adoption fee for this pet has been waived and all adoptions come with sterilization, microchip, rabies vaccination, and one year of City registration (if Lewisville resident). The Gene Carey Animal Shelter and Adoption Center is located at 995 E. Valley Ridge Blvd. Adoption Center hours are Tuesday from 12 p.m. -7 p.m., Wednesday – Friday from 10 a.m. – 5 p.m., and Saturday from 12 p.m. – 5 p.m.

Animal Service Administrator Amanda Earl brought Daisy into the Council Chamber. Mayor Gilmore introduced Daisy, a six year old Pit Bull terrier mix, and reminded everyone that adoption fees are being waived for large dogs.

### Proclamation Declaring the Week of April 1 5, 2024 as "Community Development Week."

Mayor Gilmore presented the proclamation declaring the week of April 1-5, 2024, as "Community Development Week" to Neighborhood Services Manager Ashleigh Fervan.

(Agenda Item B)

### (Agenda Item A)

(Agenda Item B)

(Agenda Item C-1)

(Agenda Item D-1)



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#### **PUBLIC HEARING**

Public Hearing: Consideration of Ordinance No. 0649-24-ZON, an Ordinance Granting a Zone Change From General Business (GB) District to Single Family Residential 5,000 Square Foot Lot (R5) District on 0.285 Acres Legally Described as Stuart Addition Block B, Lot 9; Located at 106 Martin Street; as Requested by Jonathan Kroneman, the Applicant, on Behalf of Inez Aguirre, the Property Owner (24-01-1-PZ).

(Agenda Item E-1)

106 Martin Street is currently zoned General Business and contains a legal nonconforming residential home. The property owner is seeking to rezone the property to a single family residential zoning district to subdivide the property and build an additional house on the western portion. The Planning and Zoning Commission recommended unanimous (6-0) approval of this item on February 20, 2024.

The City staff's recommendation was that the City Council approve the ordinance as set forth in the caption above.

Director of Planning, Richard Luedke was available for questions posed by the City Council.

Mayor Gilmore opened the public hearing at 7:09 p.m.

**MOTION:** Upon a motion made by Deputy Mayor Pro Tem Kelly and seconded by Councilmember Troyer the Council voted six (6) "ayes" and no (0) "nays" to close the public hearing. The motion carried.

Mayor Gilmore closed the public hearing at 7:10 p.m.

City Attorney Lizbeth Plaster read the ordinance caption into the record as follows:

"An Ordinance of the Lewisville City Council, Amending the Zoning Ordinance by Rezoning Approximately 0.285-Acres of Land, Legally Described as a Portion of Lot 9, Block B, Stuart Addition; Located at 106 Martin Street; From General Business (GB) District Zoning to Single-Family Residential (R-5) District Zoning; Correcting the Official Zoning Map; Preserving all Other Portions of the Zoning Ordinance; Determining That the Zoning Amendment Herein Made Promotes the Health, Safety, and General Welfare of the City; Providing for a Repealer, Severability, a Penalty, and an Effective Date; and Declaring an Emergency." **MOTION:** Upon a motion made by Mayor Pro Tem Meridith and seconded by Councilmember Green, the Council voted six (6) "ayes" and no (0) "nays" to approve <u>Ordinance No. 0649-24-ZON</u> as set forth in the caption. The motion carried.

Public Hearing: Consideration of <u>Ordinance</u> <u>No. 0650-24-ORD</u>, an Ordinance Adopting Youth Recreational Program Standards of Care in Compliance with Texas Administrative Code (TAC) 745.115(3).

(Agenda Item E-2)

The Texas Department of Family and Protective Services (DFPS) regulates various child day care operations. Under the Texas Human Resources Code 42.041 (b)(14) and DFPS Rules, 40 TAC 745.115(3), the camps and after school programs operated by the City of Lewisville Parks and Recreation Department are exempt from these regulations, provided that the City Council annually adopt Youth Recreational Program Standards of Care. The proposed standards are updated to ensure accuracy and consistency in language used throughout the code, as well as including updates, staff titles, and responsibilities.

The City staff's recommendation was that the City Council approve the ordinance as set forth in the caption above.

Director of Parks and Recreation Stacie Anaya was available for questions posed by the City Council.

Mayor Gilmore opened the public hearing at 7:11 p.m.

**MOTION:** Upon a motion made by Councilmember Green and seconded by Deputy Mayor Pro Tem Kelly, the Council voted six (6) "ayes" and no (0) "nays" to close the public hearing. The motion carried.

Mayor Gilmore closed the public hearing at 7:12 p.m.

City Attorney Lizbeth Plaster read the ordinance caption into the record as follows:

"An Ordinance of the Lewisville City Council, Adopting Standards of Care for Youth Recreational Programs and Amending Article VI, "Standards of Care for Youth Recreation Programs", Chapter 10, Parks and Recreation, of the Lewisville City Code; Providing for a Repealer; Severability; and an Effective Date; and Declaring an Emergency." **MOTION:** Upon a motion made by Councilmember Green and seconded by Councilmember Cade, the Council voted six (6) "ayes" and no (0) "nays" to approve Ordinance No. 0650-24-ORD as set forth in the caption. The motion carried.

#### **Visitors/Citizens Forum**

There were no speakers for Visitors/Citizens Forum.

### **CONSENT AGENDA**

- **MOTION:** Upon a motion made by Councilmember Jones and seconded by Councilmember Troyer, the Council voted six (6) "ayes" and no (0) "nays" to approve the Consent Agenda as presented.
  - APPROVAL OF MINUTES: City Council Minutes of the March 4, 2024, 3. Workshop Session, and Regular Session.
  - Approval of a Bid Award for the Windhaven Parkway and Cookie Lane Traffic 4. Signal Construction Project to Durable Specialties, Inc., in the Amount of \$781,078.10, and Authorization for the City Manager, or Her Designee, to Execute the Contract.
  - 5. Approval of a Professional Services Agreement with Bartlett & West, Inc., Fort Worth, TX, in the Amount of \$59,995 for Professional Engineering Services for the Replacement of Headwalls on Marchant Place and Ridgeway Circle and Authorization for the City Manager, or Her Designee, to Execute the Agreement.
  - 6. Approval of Waiving the Penalty and Interest on Property Tax Account 288838DEN Located at 2460 Sunderland Lane for Tax Year 2023 per Texas Tax Code Section 33.011(a)(1).
  - 7. Approval of the Fiscal Year 2023 Annual Comprehensive Financial Report (ACFR).

The motion carried.

#### **Reports**

#### **City Council and Staff Reports**

• Deputy Mayor Pro Tem Kelly encouraged everyone to visit the Gene Carey Animal Shelter and Adoption Facility.

(Agenda Item F)

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(Agenda Item G)

(Agenda Item H)

(Agenda Item I-1)

### LEWISVILLE CITY COUNCIL REGULAR SESSION MARCH 18, 2024

- Councilmember Green reminded everyone that there is a foster program at the Gene Carey Animal Shelter and Adoption Facility.
- Councilmember Jones represented the City Council at the 40<sup>th</sup> anniversary at Westside Baptist Church and recognized them for all that they do.
- Mayor Pro Tem Meridith reported on upcoming Lewisville Library activities.
- Councilmember Troyer reported on upcoming Lewisville Grand events.
- Director of Public Services Aaron Russell reported on the lake level.
- Assistant City Manager Jim Proce provided an update on the Tittle McFadden Public Safety Center.
- City Manager Claire Powell reminded everyone that the annual City Council Retreat is scheduled for March 22-23, 2024, at Lewisville City Hall.
- Mayor Gilmore encouraged everyone to attend the City Council Retreat.

#### **Return to Workshop Session if Necessary**

### **Closed Session**

There was no closed session.

Reconvene and Consider Action, if any, on Items Discussed in Closed Session

### Adjournment

There being no further business to come before the Council, Mayor Gilmore adjourned the meeting of the Lewisville City Council at 7:22 p.m. on Monday, March 18, 2024.

These minutes approved by the Lewisville City Council on the  $1^{st}$  day of <u>April</u>, 2024.

### APPROVED

TJ Gilmore MAYOR

ATTEST:

Thomas Harris III, CITY SECRETARY (Agenda Item J)

(Agenda Item K)

(Agenda Item M)

(Agenda Item L)

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# Lewisville City Council Meeting March 18, 2024

Review Annual Comprehensive Financial Report & Popular Annual Financial Report for FY2023

# **City of Lewisville**

### **City Council Meeting**

March 18, 2024







- Introduction
- Audit Results
- Audit Process
- Required Communications
- Financial Highlights
- Upcoming Changes
- Discussion



We know your questions don't end when the audit does, so the team leadership remains available to you throughout the year.

# John DeBurro, CPA

Partner, Assurance Services

### Lauren Futch, CPA

Manager, Assurance Services

# **Engagement Team**





# Audit Results



# **Audit Results**



- We issued the Independent Auditor's Report on the financial statements
  - ✓ Unmodified Opinion
- We issued the Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
  - ✓ No findings noted
- We issued the Independent Auditor's Reports on Compliance for Each Major Federal and State Program and Reports on Internal Control over Compliance and on the Schedules of Expenditures of Federal and State Awards in Accordance with The Uniform Guidance and Texas Grant Management Standards
  - ✓ No findings noted
  - ✓ Unmodified Opinion

Quality



udit

# **Engagement Timeline**







- The audit was performed in accordance with Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Standards (GAGAS), Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards (The Uniform Guidance) and State Awards (Texas Grant Management Standards)
- The audit process was a **risk-based approach** in which we identified potential areas of risk that could lead to material misstatement of the financial statements. We tailored our audit programs and resources to specifically address areas of risk, such as:
  - Revenue recognition and related receivables
  - Federal and state grant revenues and expenditures
  - Capital projects, purchasing and compliance with bidding procedures
  - Payables, accrued liabilities, and expenditures
  - Long-term liabilities (i.e. bonds payable)





Interim fieldwork and risk assessment were performed in October 2023. Procedures included:

- Interim fieldwork included:
  - Walkthroughs of accounting controls over significant transaction cycles:
    - A. Cash Disbursements and Purchases
    - B. Payroll Disbursements (including TMRS data)
    - C. Investments
    - D. Receipts Municipal Court, Utility Billing, Taxes, Permits
    - E. Budget and Financial Close Process
  - Tests of compliance with the Public Funds Investment Act
  - Control testing over cash disbursements and payroll transactions
  - Testing of capital projects



Final fieldwork- performed in January / February 2024 - Procedures included:

- Testing account balances and current year activity using a combination of:
  - analytics,
  - vouching of material transactions, and
  - Sampling
- Evaluating estimates for reasonableness
- Identification and testing of the City's major federal program:
  - Coronavirus State and Local Fiscal Recovery Funds- CFDA# 21.027 -\$2,746,696
- Identification and testing of the City's major state programs:
  - Corporate Drive FM 544 to Josey \$8,383,319
  - TIFMAS 2023 Border Support \$751,896



# Auditor Communications for the year ended September 30, 2023

# WeaverViews



Communication	Results
Generally accepted auditing standards	The financial statements are the responsibility of the City. Our audit was designed to provide for reasonable rather than absolute assurance that the financial statements are free of material misstatement. Our responsibility is to express an opinion about whether the financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities. The audit of the fiscal year 2023 financial statements is complete and we have issued an <b>unmodified (clean) opinion</b> .



### Communication

Generally accepted government auditing standards

### Results

In addition to the GAAS responsibilities, we are required to issue a written report on our consideration of internal controls and identify significant deficiencies, including material weaknesses, if any. Our reports do not provide assurance on internal controls. We design our audit to provide reasonable assurance of detecting material misstatements resulting from noncompliance with provisions of contracts or grant agreements that have a direct or material effect on the financial statements. We issue a written report on the results of these procedures; however, our report does not express an opinion on compliance.

### No findings noted.



### Communication

Auditor's Responsibility under The Uniform Guidance (Federal) and Texas Grants Management Standards (State)

### Results

Our testing includes all major federal and state financial assistance programs. We report on such testing and disclose any significant deficiencies in internal control over compliance, including material weaknesses we identify. Our reports do not provide assurance on internal control over compliance. We perform procedures for the purpose of expressing opinions on whether major federal and state financial assistance programs have been administered in compliance with applicable laws and regulations.

The audits of the fiscal year 2023 major federal and state financial assistance programs have been completed and we have issued **unmodified (clean) opinions**.



Communication	Results
Unusual transactions and the adoption of	The significant accounting policies used by the City are described in Note 1 to the financial statements.
new accounting principles	During fiscal year 2023, the City implemented GASB Statement No. 96, "Subscription-Based Information Technology Arrangements (SBITAs)" which establishes a framework for reporting for subscription-based technology arrangements for government end users. As a result, implementation of this pronouncement had no impact on

the City's 2023 financial statements.



Communication	Results				
Fraud and illegal acts	No material errors, irregularities, or illegal acts were noted.				
Material weakness in internal control	No material weaknesses noted.				
Other information contained in documents containing audited financial statements	We provided an "in relation to opinion" on supplementary information accompanying the financial statements. We performed limited procedures on the required supplementary information. We did not provide any assurance on this information. The Introductory and Statistical sections were both unaudited.				
Management judgments and accounting estimates	Management's estimates of Incurred-but-not- reported (IBNR) workers' comp, health, and dental claims; net pension and OPEB liabilities; allowance for uncollectible receivables; and estimated useful lives for capital assets were evaluated and determined to be reasonable in relation to the financial statements as a whole.				



Communication	Results
Difficulties encountered	No difficulties or disagreements arose during the course of our audit.
Management representations	We requested certain representations from management that were included in the management representation letter.
Management consultations	We are not aware of management consulting with other accountants for a second opinion.
Auditor independence	No independence issues noted.
Audit adjustments	Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. There were no corrected or uncorrected misstatements identified during our audit.







### Comparison of Governmental Revenues by Source

Governmental Funds Revenues for the FY 2023 totaled \$203.9 million, a \$32.2 million or 18.8% increase. This increase is primarily the net effect of increases in Property and Other Taxes (\$7.2M), Investment Income (\$20.0M), and Intergovernmental Revenue (\$8.1M), and a decrease in Other Income (\$2.3M).





### Comparison of Governmental Funds Revenues by Source



(2-year comparison in millions of dollars)



Comparison of Governmental Funds Expenditures by Fund (In millions of dollars)



# Governmental Fund Expenditures for FY2023 totaled \$243.3 million, a \$48.1 million or 24.6% increase. This increase is primarily the result of:

- Capital outlay expenditures increased \$37.1 million.
- Public safety expenditures increased \$6.4 million.
- Culture, parks and recreation expenditures increased \$6.2 million.



### **Comparison of Governmental Funds Expenditures \***



\*(2-year comparison in millions of dollars)



### **Fund Balances**

### **Governmental Funds Fund Balance**

The City's governmental funds reported an ending fund balance of \$285.2 million at September 30, 2023 as follows:



- Governmental Funds' fund balance increased by \$34.6M, primarily due to the net effect of a \$50.6M increase in the General Capital Projects Fund and a \$12M decrease in the General Fund.
- Unassigned fund balance in the General Fund (\$46.1M) represents 45.3% of General Fund expenditures.

## **General Fund Budget vs Actual**



### original amended actual \$126.2 \$123.3 \$118.3 \$140 \$115.2 \$110.4 \$101.8 \$120 \$100 \$80 \$60 \$40 \$20 \$expenditures revenues

### FY2023 General Fund Budget and Actual – in \$ millions

Overall, favorable budgetary variance of \$11.9 million:

- Revenues exceeded budget by \$3.0 million.
- Expenditures were \$8.6 million below budget.
- Other Financing Sources (net) exceeded budget by \$0.3 million.

### Enterprise Funds-Current and Prior Year



	Statement of Revenues, Expenses and Changes in Net Position- Enterprise Funds							osition-
	2023 2022		\$ Change		% Change			
Operating revenues	\$	59,400,493	\$	53,252,156	\$	6,148,337		12%
Operating expenses		(40,233,480)		(36,705,204)		3,528,276		10%
(Net)Nonoperating revenue		2,840,766		(5,870,757)		8,711,523		-148%
Capital contributions and transfers		(1,270,427)		2,930,180		(4,200,607)		-143%
Change in net position	\$	20,737,352	\$	13,606,375		7,130,977		52%

Net position increased by \$20.7 million over prior year:

- Operating revenues increased \$6.1 million primarily due to increased consumption and increase in utility fees.
- Operating expenses increased \$3.5 million primarily due to an increase in cost of water purchases
- Net Nonoperating revenues increased \$8.7 million primarily due to a \$9.0 million increase in investment earnings over the prior year
- Capital contributions and transfers-decreased by \$4.2 million primarily due to decreases in developer contributions and impact fees

# **Upcoming Changes**



GASB 101:

Effective for periods beginning after 12/15/2023 (FY2025)

### **Compensated Absences**

- GASB 101 improves the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences under a unified model and amending certain previously required disclosures.
- This statement requires that a liability for certain types of compensated absences, not be recognized until the leave commences. This Statement also requires that a liability for specific types of compensated absences not be recognized until the leave is used.





# We appreciate the opportunity to work with **City of Lewisville** and look forward to our continued relationship.


# Discussion

# **Contact Us**

# John DeBurro, CPA

Engagement Partner 713.297.6930 | john.deburro@weaver.com

# Lauren Futch, CPA

Audit Manager 972.448.9867 | lauren.futch@weaver.com

# **MEMORANDUM**

SUBJECT:	Approval of Change Order #3 with Belt Construction, Inc., in the Amount of
DATE:	March 4, 2024
VIA	Jim Proce, ICMA-CM, Assistant City Manager
FROM:	David Salmon, P.E., City Engineer
TO:	Claire Powell, City Manager

SUBJECT: Approval of Change Order #3 with Belt Construction, Inc., in the Amount of \$315,827.97 for the Timber Creek Aerial Sewer Capital Project and Authorization for the City Manager, or Her Designee, to Execute the Change Order.

## BACKGROUND

The original project includes replacing 7 aerial sanitary sewer crossings along Timber Creek at various locations throughout the City. The subject change order covers three separate items related to the subject project.

- 1. In June 2023, the Contractor, Belt Construction was instructed to stop working on Line 20 of the subject project by the City, as it became apparent the City did not have an easement in the required location across property owned by TNMP. Subsequently, the City requested an easement, and TNMP had issues with the proposed location relative to their substation. After a lengthy back and forth negotiation between the City and TNMP, an easement was obtained 150ft west of the substation, over 100 feet from the original planned location. The easement documents were signed by TNMP officials on January 23, 2024, and the revised drawing for Line 20, accommodating TNMP's requirements, was provided by the consulting engineer (Huitt-Zollars, Inc.) on Jan. 29, 2024. The new drawings included a realignment of the sanitary sewer line across Bellaire to meet TNMP's specifications, including the addition of two new 6-ft manholes, and additional encasement pipe across Bellaire Blvd. This portion of the change order cost is \$106,938.57.
- 2. Also in June 2023, Belt Construction submitted RFI No. 2 regarding the existing manhole condition at Sta: 8+97 located in the median of Bellaire Blvd. near Fox Creek, Line 20. During construction, they discovered that the bottom of the manhole is constructed of brick and any attempt to modify the structure could cause failure. The consulting engineer revised the original drawings proposing the existing manhole to be removed and replaced at this location at the same time they revised the alignment due to the easement issue. To remove and replace the old manhole, bypass pumping of the sewer flow is required making the removal and replacement much more costly than normal. This portion of the change order cost is \$161,034.40.

CO #3 – Timber Creek Sewer Crossings, Phase 2 April 1, 2024 Page 2

3. At Line 12, the plans did not show or call out an existing stormwater pipe parallel to the proposed sanitary sewer line and the quantities to remove and replace the stormwater pipes were not included in the original contract. To construct the proposed sanitary sewer crossing, the Contractor had to remove and replace the 36" storm sewer pipe, reinstall the gabion retaining wall around the storm sewer outfall and stabilize the soil between the gabion wall and the Creek within the City easement. A product called Flexmat was determined to be the most efficient option for stabilizing the soil at this location, with the recommendation of the consulting engineer. This portion of the change order cost is \$47,855.00. This work has been completed to avoid additional creek erosion. The consultant indicated that the storm sewer outfall should have been picked up during the consultant's topography survey. The consultant agreed to provide the surveying and design for the realignment of Line 20 at no additional cost.

# ANALYSIS

To date, there have already been two change orders approved by staff. Change order # 1 for an increase of \$57,260.93 covered the cost of an additional 10-foot drop manhole. Change Order #2, a deduction of \$37,200.48 included several items related to adjusting the location of one of the lines to avoid a conflict with bike and ped trail, upsizing two manholes and additional pavement replacement on Continental Drive. The big savings was not having to replace the bike and ped trail pavement. With the originally approved contingency amount of \$229,549.46, the total amount of Change Order No. 1 (\$57,260.93), No. 2 (-\$37,200.48) and No. 3 (\$315,827.97) exceeds the contingency amount by \$106,338.95 for a total of \$335,888.42, thus requiring City Council approval.

The additional cost of change order No. 3 would bring the total cost of the project from \$4,820,538.71 to \$4,926,877.67. Funding for this change order is available in the Timber Creek Aerial Sewer capital project. This change order will also add an additional 90 days to the original 365-day timeline, pushing the completion date from April 4, 2024, to July 23, 2024.

The change order also adds 90 days to the contract to account for delays caused by needing to redesign line 20 and obtain easements along with the other additional work.

# **CITY'S STAFF RECOMMENDATION**

That the City Council approve the change order and authorize the City Manager, or her designee, to execute the change order as set forth in the caption above.





#### Change Order No. 3 Timber Creek Utility Crossings Phase II Project No. <u>U1001</u>

Change Order No. 3 hereby amends the above referenced contract, dated <u>March 6, 2024</u>, between the City of Lewisville, Texas, herein called the Owner and <u>Belt Construction</u>, <u>Inc.</u>, hereinafter called the Contractor. The Owner and Contractor hereby agree to amend the above referenced contract in accordance with Change Order No. 3, specifically the provisions cited as follows:

- 1. THAT the Contractor was instructed to stop insatlling Saintary line 20 under Bellaire Blvd. in June 2023, since the easement was not obtained from Texas New Mexico Power (TNMP) prior to construction. TNMP required 150 ft west of distace from the western fence line of the existing substation to the proposed sanitary line at TNMP's property. The easement document was signed by TNMP on 01/23/2024.
- 2. THAT per RFI No. 2, the bottom of the manhole at Sta: 8+97 is made of brick and is in poor condition.
- 3. THAT a revised approved drawing was received on 01/29/204 which includes the following changes:
- 3a. THAT a new alignment for the sanitary pipe Line 20 is proposed to maintain a distance of 150 ft west of the western fence line of the existing substation at TNMP's property.
- 3b. THAT the manhole at Sta: 8+97 is proposed to be removed and replaced to prevent connection failures to the new encasement pipe. Bypass pipe needs to be installed for the existing flow to this manhole at the time of construction.
- 3c. THAT the Contractor shall bore additional 30" thick steel encasement underneath existing Bellaire Blvd.
- 3d. THAT two new 6 ft manhole to be installed at Sta: 4+30 and Sta: 5+62.
- 3e. THAT the Contractor shall replace 52 SFof trail concrete panels for installing the proposed sewer line along Fox Creek.
- 4. THAT the Contractor shall remove and reinstall the 36-inch RCP stormwater pipe parallel to sanitary Line 12 and install flexmat between the existing gabion wall and the sanitary crossing within the easement, as per RFI #7 and attached email correspondence.
- 5. THAT the Contractor shall be paid for the below cited items at the agreed upon unit price due to the variations in quantities between the field measurements and the plans.
- 6. THAT the Contractor requests an extension of 90 days to be added to their contract.
- 7. THAT the original contract did not have Items Add-5 to Add-17.

Item No.	Description	<u>Quantity</u>	<u>Unit</u>	<u>l</u>	Jnit Price		<u>Total</u>	
	Line 20							
Add-5	Down Time Cost (Bore Crew 6/12/23 - 6/13/23)	1.00	LS	\$	8,374.01	\$	8,374.01	
Add-6	Cut Casing Pipe	1.00	LS	\$	10,503.13	\$	10,503.13	
Add-7	Re-Dig Manhole in Median	1.00	LS	\$	76,533.61	\$	76,533.61	
Add-8	Remove Existing Manhole	1.00	EA	\$	66,000.79	\$	66,000.79	
#9-6	Furnish and Install 6-foot Diameter Precast Manhole	2.00	EA	\$	18,500.00	\$	37,000.00	
#9-8	Warren epoxy lining for 6-foot SSMH	29.50	VF	\$	540.00	\$	15,930.00	
#9-13	Remove and Replace 5-inch thick sidewalk (3000 psi)	52.50	SF	\$	13.25	\$	695.63	
#9-4	Furnish and Install 30-inch steel encasement BOTOC	30.00	LF	\$	1,400.00	\$	42,000.00	
Add-9	Pipe Crew Mobilization	1.00	LS	\$	8,500.00	\$	8,500.00	
Add-10	Bore Crew Mobilization	1.00	LS	\$	10,000.00	\$	10,000.00	
Add-11	Traffic Control (Additional Months and Lane Closure for Bypass Setup)	1.00	LS	\$	12,100.00	\$	12,100.00	
Add-12	Clearing New ROW	1.00	LS	\$	9,735.99	\$	9,735.99	
Add-13	Remove and Replace Erosion Control	1.00	LS	\$	9,773.05	\$	9,773.05	
Add-14	New SSMH Base (STA 4+30)	1.00	LS	\$	7,446.76	\$	7,446.76	
#9-10	Connect to existing SSMH	(1.00)	EA	\$	8,900.00	\$	(8,900.00)	

## Change Order No. 3 Timber Creek Utility Crossings Phase II Project No. <u>U1001</u>

#9-2	Furnish and Install 21-inch diameter SDR 35 PVC	(30.00)	LF	\$ 310.00	\$ (9,300.00)
9-5	Furnish and Install 5-foot diameter precast concentric SSMH	(1.00)	EA	\$ 17,500.00	\$ (17,500.00)
#9-7	Warren epoxy lining for 5-foot SSMH	(17.00)	VF	\$ 460.00	\$ (7,820.00)
#9-15	Remove and replace 18-inch diameter HDPE pipe and class	(1.00)	LS	\$ 3,100.00	\$ (3,100.00)
	Line 12	2			
Add-15	Remove and Replace 36" RCP (using existing)	90.00	LF	\$ 283.72	\$ 25,534.80
Add-16	Remove and Replace Pipe to Gabion Concrete Transition	1.00	LS	\$ 8,752.20	\$ 8,752.20
Add-17	Flexamat Entire Area Alternate	1,150.00	CY	\$ 32.32	\$ 37,168.00
#8-13	Gabion Mattress Credit	(40.00)	CY	\$ 590.00	\$ (23,600.00)
	Total Amount of Change Order No. 1:				\$ 315,827.97

8. THAT upon approval of Change Order No. 3 by the City Manager of the City of Lewisville, the City will give notice of such approval to the Contractor within ten (10) calendar days.

CHANGE ORDER No. 3 APPROVED BY CITY ENGINEER THIS \_\_\_\_\_ DAY OF\_\_\_\_\_, 2024.

#### CITY OF LEWISVILLE

**BELT CONSTRUCTION, INC.** 

Claire Powell, City Manager

Jason Langford, Sr. Project Manager

1	Change Order Request Line 20
2	Change Order Request Line 12
	Change Orde 1 Supporting Documents
1a.	Line 20 Revised Drawing
1b.	RFI #2 Brick Manhole Bottom
1c.	TNMP Correspondence - Sanitary Easement Doc.
1d.	Signed Easement Doc.
	Change Orde 2 Supporting Documents
2a.	RFI#7 Line 12
2b.	Engineer's Correspondence - Flexmat (option 3)
2c.	Flexmat Picture

#### **MEMORANDUM**

**TO:** Claire Powell, City Manager

VIA: Aaron Russell, P.E., Director of Public Services

- FROM: Roshan Chaudhary, CIP Manager
- **DATE:** March 18, 2024
- SUBJECT: Approval of a Professional Services Agreement with OCMI, Inc., Richardson, TX, in the Amount of \$908,062 for Cost and Project Control Services for the Prairie Creek Wastewater Treatment Plant (PCWWTP) Aeration Basin Expansion Project; and Authorization for the City Manager, or Her Designee, to Execute the Agreement.

## BACKGROUND

The City of Lewisville's Wastewater Treatment Plant was originally constructed in the 1950's, with major expansions and improvements completed over the last sixty years to meet state and federal biological and regulatory permit requirements.

In 2018, the annual average flow at the Prairie Creek Wastewater Treatment Plant exceeded 75% of its permitted discharge capacity. The Texas Commission on Environmental Quality requires that when this limit is reached, publicly-owned treatment works (POTW) must begin planning for expansion. This rule also requires that when the annual average flow exceeds 90% of the plant's permitted capacity, the POTW then needs to be in construction for expansion. The current wastewater flow is approaching 90% of capacity.

The City contracted with HDR who completed the Prairie Creek Wastewater Plant Master Plan in October 2020. An ultimate site layout and process schematic was developed for anticipated buildout flows along with a capital improvements plan (CIP) to address phasing needed improvements and sequencing for each plant project.

The current treatment capacity of the plant is not adequate for treating future increased flows related to population growth in the City of Lewisville service area and the process does not meet the anticipated discharge permit limitations, which are expected to impose an ammonia limit on the plant in the future. This project will increase the plant flow capacity and nutrient removal capacity to meet the discharge requirements set by the Texas Commission on Environmental Quality. This project will also decommission and demolish a section of the plant known as Plant III to provide real estate necessary for the expansion of the section of the plant known as Plant II, as well as provide additional aeration-generating equipment and infrastructure for expanded treatment capabilities.

# ANALYSIS

During the design phase of the project, staff determined that the Construction Manager at Risk (CMAR) would be the most appropriate procurement method due to the project's scale and complexity along with anticipated operational challenges during construction. CMAR provides the flexibility to award to the firm that will provide the best value based on qualifications and project cost. This same project delivery method was used when building Thrive, Tittle McFadden Public Safety Center, and Fire Stations 3 and 8. The project's scale and complexity also warrant procurement and project management expertise not currently within the Public Services Department.

The city conducted a Request for Qualifications (RFQ) for Project Control and Cost Management Services for capital improvement projects in June 2022. The RFQ established a list of qualified consultants to provide these services on an as-needed basis as projects are identified.

Three (3) proposers were determined to be qualified and were added to the notification list. OCMI, Inc. was selected from this list to provide Project Control and Cost Management services for this project based on their experience with municipal water infrastructure projects. Staff administratively approved a contract with OCMI for CMAR contract development and assistance with CMAR firm selection for this project. The CMAR selection process is completed and staff desires to retain OCMI for pre-construction and construction phase services.

OCMI will serve as the city's representative, providing Project Control and Cost Management services. OCMI will provide services in the pre-construction phase by assisting the city with the Guaranteed Maximum Price (GMP), validation, review, and advice on pre-construction documentation generated by the CMAR, including logistic plans, preliminary schedules, and procurement submittals. OCMI will also provide their services in the construction phase, where they will be involved in the preparation of the master project schedule, construction schedule management, budget monitoring, Requests for Information (RFI), change orders, pay application review, and the close-out process. OCMI will provide a full-time project manager to observe the day-to-day construction activities, track project progress, and report to the city.

OCMI, Inc. has extensive pre-construction, construction, and cost management expertise and has worked with cities throughout the nation. OCMI is a full-service, independent construction management company with nearly four decades of experience and has partnered with local, state, and federal government agencies as a trusted, low-risk provider of cost estimation, project controls, construction, and project management solutions.

# **CITY'S STAFF RECOMMENDATION**

That the City Council approve the agreement and authorize the City Manager, or her designee, to execute the agreement as set forth in the caption above.

# 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. <u>PCWWTP Aeration Basin Expansion</u>: Expansion of the aeration basins at the Prairie Creek WTTP. This will be a CMAR construction.

# 2. SCOPE OF SERVICES.

- A. <u>Pre-Construction Period Services:</u> See Attachment B
- B. <u>Construction Period Services</u>: See Attachment B
- C. <u>Inspection Services:</u> 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.
- THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, 8. 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 shall ensure that 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 <u>ethics.state.tx.us</u>, 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 or
      - 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 is it 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 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
    - 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 \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

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

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

CONSULTANT OCMI, Inc.

nfel D.r By:

Neil Murphy, President

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

Thomas Harris III, City Secretary

\_\_\_\_

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

# **CITY OF LEWISVILLE**

151 West Church Street Lewisville, Texas 75057

# **APPROVED AS TO FORM:**

Lizbeth Plaster, City Attorney

# Attachment A

# <u>INSURANCE REQUIREMENTS</u> 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. <u>DEDUCTIBLES AND SELF-INSURED RETENTIONS</u>

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. <u>VERIFICATION OF COVERAGE</u>

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 JOINT AND CONCURRING NEGLIGENCE OR FAULT EVENT OF 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.

# **Attachment B**



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 ExpansionPre-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.

<u>Project Executive:</u> 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.

<u>Contract Manager</u>: 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.



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<u>Construction Manager / Project Manager</u>: 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 onsite 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.

<u>Cost Estimating Manager / Senior Cost Estimator / Estimator</u>: The cost management roles outlined represent OCMI's team of cost estimators and managers. These personnel will lead development of an independent cost estimate are 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.

<u>Senior Scheduler:</u> 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 <u>not</u> 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. <u>GMP Validation</u> 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



appropriate value for the City.

b. <u>Pre-Construction Coordination</u> – 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. <u>Master Project Schedule</u> 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. <u>Construction Schedule Management</u> 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. <u>Budget Monitoring</u> 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. <u>Meetings</u> 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. <u>RFI & Submittals</u> 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.



- f. <u>Change Orders</u> 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. <u>Pay Applications</u> 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.
- <u>Coordination</u> 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. <u>Closeout</u> OCMI PM will complete and transmit the Project Closeout Checklist to the City of Lewisville.

#### III. As Needed Inspector

- a. <u>Field Inspection</u> 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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SOW Item #	I. Pre-Construction Services	Weeks	Hours Per	Total Hours	Rate Subtota		Subtotal
	Independent Estimate, Reconciliation						
1.0.	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
		_			Subtotal	Ś	39,724.00
						-	,
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
	-				Subtotal	\$	66,150.00
			Pro-Constr	ruction Servi	cos Total	Ś	105,874.00
			rie-consti			Ŷ	105,674.00
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
					Subtotal	\$	9,080.00
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
					Subtotal	\$	50,232.00
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
					Subtotal	\$	616,749.00

#### **FEE PROPOSAL – Base Services**

Construction Period Services, Total \$ 781,935.00



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
		•	Insp	ection Servi	ces, Total	\$ 20,253.00

#### **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,

Kyle Veater Vice President kveater@ocmi.com 469.431.0571

#### **MEMORANDUM**

**TO:** Claire Powell, City Manager

VIA: Aaron Russell, P.E., Director of Public Services

- FROM: Roshan Chaudhary, CIP Manager
- **DATE:** April 1, 2024
- SUBJECT: Approval of a Construction Manager at Risk (CMAR) Pre-construction Agreement with Archer Western Construction, LLC., Irving, Texas, in the Amount of \$449,814 for the Prairie Creek Wastewater Treatment Plant Aeration Basin Expansion Project; and Authorization for the City Manager, or her Designee, to Execute the Agreement.

## **BACKGROUND**

The City of Lewisville's Wastewater Treatment Plant was originally constructed in the 1950s, with major expansions and improvements completed over the last sixty years to meet state and federal regulatory permit requirements. In 2018, the annual average flow at the Prairie Creek Wastewater Treatment Plant exceeded 75% of its permitted discharge capacity. The Texas Commission on Environmental Quality requires that when this limit is reached, publicly-owned treatment works (POTW) must begin planning for expansion. This rule also requires that when the annual average flow exceeds 90% of the plant's permitted capacity, the POTW then needs to be in construction for expansion. The current wastewater flow is approaching 90% of capacity.

In May 2019, after a Request for Qualifications (RFQ) selection effort was conducted, Council awarded HDR Engineering, Inc. to perform a master planning study of the treatment facility. A series of projects were developed to expand the plant and improve various components to meet tighter regulatory requirements and higher flows to buildout. In April 2022, the City Council approved the professional service agreement with HDR Engineering, Inc. for design, bidding, and construction phase services for the expansion of the aeration basin and blower system improvements. HDR completed the 30% design and submitted a preliminary design report in June 2023. Given the schedule constraints, staff decided to utilize the Construction Manager at Risk (CMAR) delivery method to best mitigate these issues during construction. During the CMAR process, HDR will complete the design collaboratively with the selected CMAR, leveraging their expertise in market conditions, timing, and procurement.

# ANALYSIS

Awarding the CMAR is a required two-step process. The first requires a Request for Qualifications (RFQ) in which qualifications were due on November 11, 2023. Three (3) vendor qualifications were received and reviewed by the evaluation team. Upon completing evaluation of the

qualifications, the evaluation team decided to invite all three companies to the Request for Proposal phase, which was the second step in the process. Proposals were due on December 19, 2023, and interviews were conducted. The interview is one of the most important elements in the overall selection process as it provides an opportunity for staff to meet the management team. The evaluation team ranked and scored each candidate and awarded points based on the following criteria:

- A. There was a maximum of 420 points available for the combined score of the proposal and the interview.
- B. The Proposal was used to award 140 (or 33.33%) of these 420 possible points, as follows:
  - 1. There were one hundred (100) total points available for the CMAR's Fee & Cost Proposal, which is twenty-three point eight percent (23.8%) of the total available score at this phase. These points were apportioned to each candidate as shown in the following example.

Assuming the lowest cost and fee was \$100,000, proposed by Firm A, the 100 total points would be awarded as follows:

Firm A:  $\frac{\$100,000}{\$100,000}$  x 100 points = 100 points  $\frac{\$100,000}{\$125,000}$  x 100 points = 80 points  $\frac{\$125,000}{\$125,000}$  Firm C:  $\frac{\$100,000}{\$150,000}$  x 100 points = 67 points

- 2. The single number representing the combined total of each CMAR's Fee & Cost Proposal was read out loud by a Purchasing Department representative, after their timely receipt and opening of the proposals.
- 3. The construction schedule and construction cost estimate each account for twenty (20) points, for a total of forty (40) points in the proposal section.
- 4. The selection committee was not provided with the information in the Fee & Cost Proposals, or the results of the scoring of the proposals until after they completed their scoring of the interviews.

C. The interview was used to award 280 (or 66.67%) of these 420 possible points.

After the interview process, it was determined that Archer Western Construction Co., LLC, received the highest evaluation score and is recommended for award.

Archer Western has conducted business for over 30 years in North Texas. The firm has worked on similar projects in the Dallas-Fort Worth metroplex and has worked on over 18 projects as the CMAR in Texas. Additionally, they have a successful collaboration history with HDR

Engineering, Inc. Some of the more relevant projects included are the Pierce-Burch Water Treatment Plant Improvements (\$112 million), the St. Vrain Water Treatment Plant Upgrades (\$32 million), and the North Water Reclamation Facility Expansion (\$27 million). Archer Western has also satisfactorily completed City of Lewisville projects in the past as well.

This agreement will allow Archer Western to provide pre-construction services consisting of direct collaboration with HDR in project budget formulation, cost estimating, scheduling, constructability reviews, and value engineering studies. These services take place between the completion of the schematic designs, through the design documents, and are complete when the construction documents are finalized. Upon completion of construction documents, staff will bring forward an amendment to this contract that includes full construction services establishing the Guaranteed Maximum Price (GMP). Staff expects to bring an Early Work Bid Package to the City Council for approval in late summer of 2024.

# **CITY'S STAFF RECOMMENDATION**

That the City Council approve the award and authorize the City Manager, or her designee, to execute the agreement as set forth in the caption above.

# CITY OF LEWISVILLE, TEXAS

### CONSTRUCTION MANAGER AT RISK FOR PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION

# CONSTRUCTION MANAGER AT RISK PRECONSTRUCTION SERVICES

CONTRACT NO. 24-12-C

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#### CONSTRUCTION MANAGER AT RISK FOR PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION CONSTRUCTION MANAGER AT RISK PRECONSTRUCTION PHASE SERVICES CONTRACT NO. 24-12-C

**THIS CONTRACT**, made and entered into this by and between City of Lewisville, Texas, hereinafter designated the "CITY" and Archer Western Construction, hereinafter designated the "Construction Manager at Risk" or "CM at Risk."

#### RECITALS

- A. The City Manager of the City of Lewisville, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City has entered into a separate contract with the Design Professional to design for construction the <u>Prairie Creek</u> <u>WWTP Plant II Aeration Basin Expansion</u> as described in Exhibit A (*Design Summary*) attached, hereinafter referred to as the "Project".
- C. The City has procured construction services utilizing a Construction Manager at Risk method pursuant to chapter 2269 of the Texas Government Code.
- D. In response to the City's RFP, [Construction Manager at-Risk] (Archer Western Construction) has agreed to provide preconstruction and construction services to the City as a Construction Manager at Risk for the Project.
- E. The contract structure for this Project includes this Preconstruction Services Agreement and the Construction Services Agreement which is attached hereto as Exhibit B.

#### AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM at Risk as follows:

#### ARTICLE 1 – TERMS AND DEFINITIONS

<u>Addenda</u> - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

<u>Preconstruction Agreement</u> – This written document signed by the City and CM at Risk for preconstruction services during the preconstruction phase of the Project.

<u>Alternate Systems Evaluations</u> – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

<u>Change Order (Amendment)</u> - A written instrument issued after execution of the Contract Documents signed by the City and CM at Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or the Work; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

Owner - The City of Lewisville, Texas.

City's Designated Project Manager - The City of Lewisville representative who is designated as project manager for the Project.

<u>Construction Contract Time(s)</u> - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents - The drawings and specifications prepared by the Design Professional.

<u>Construction Fee</u> – The CM at Risk's administrative costs, home office overhead, and profit, whether at the CM at Risk's principal or branch offices, as more specifically outlined in section 2.6.3.3.

Construction Manager at Risk (CM at Risk) - The entity with whom the City has entered into the Preconstruction Agreement.

<u>Construction Management Plan</u> – Formal documentation prepared and maintained by the CM at Risk describing the sequence and duration of the activities to accomplish the Work within the Contract Time including but not limited to those items set forth in Section 2.2.

<u>Contingency</u>, <u>CM at Risk's</u> - A fund to cover cost growth during the Project used at the discretion of the CM at Risk usually for costs that result from Project circumstances. The amount of the CM at Risk's Contingency will be negotiated as a separate line item
in each GMP package. Use and management of the CM at Risk's Contingency is described in Section 2.6.

<u>Contingency</u>. <u>Owner's</u> – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM at Risk's GMP packages. Use and management of the Owner's Contingency is described in Section 2.6.

Contract Amount - The cost for services for this Contract as identified in Article 4.

<u>Contract Documents</u> - means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders; (ii) this Preconstruction Contract, including all exhibits and attachments; (iii) Construction Documents; (iv) Guaranteed Maximum Price Amendment(s), maintenance bond and performance and payment bonds.

<u>Contract Time(s)</u> - The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

<u>Cost of the Work</u> - The direct costs or stipulated rates necessarily incurred by the CM at Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include: the CM at Risk's Construction Fee; General Conditions costs; the cost of subcontractor payment and performance bonds, if any; costs associated with any subcontractor default insurance program (sometimes referred to as SUBGUARD) provided required by the CM at Risk.

<u>Critical Path</u> - means the longest sequence of construction activities which establishes the minimum overall Project duration.

Day - Calendar day unless otherwise specifically noted in the Contract Documents.

<u>Deliverables</u> – The work products prepared by the CM at Risk in performing the scope of work described in this Preconstruction Contract.

Design Professional - The licensed engineering or architecture firm who furnishes design and/or construction administration services required for the Project.

<u>Drawings (Plans)</u> – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM at Risk during the construction phase and which have been prepared, signed, and sealed by the Design Professional. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *"not for construction"*. Shop Drawings are not Drawings as so defined.

Engineer — The licensed person, firm or corporation who furnishes engineering services required for the Project.

<u>Float</u> - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

<u>General Conditions Costs</u> – includes, but is not limited to, the following types of costs for the CM at Risk during the construction phase: (i) payroll costs for project manager or CM at Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen at the site, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment, and minor expenses, (vi) cost of utilities, fuel, sanitary facilities, telephone and data services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, and (ix) costs of consultants not in the direct employ of the CM at Risk or Subcontractors.

<u>Guaranteed Maximum Price (GMP)</u> – The maximum total amount of money that the City agrees to pay the CM at Risk for construction phase services.

<u>GMP Plans and Specifications</u> – The plans and specifications provided pursuant to section 2.6 upon which the Guaranteed Maximum Price Proposal is based.

<u>Guaranteed Maximum Price (GMP) Proposal</u> - The offer or proposal of the CM at Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

<u>Laws and Regulations</u> - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

<u>Milestones</u> - A principal event in the performance of the Work that the Contract requires CM at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice of Intent to Award—The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM at Risk fixing the date on which the CM at Risk will start to perform the CM at Risk's obligations under this Contract.

<u>Payment Request</u> - The form that is accepted by the City and used by the CM at Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

<u>Project</u> - The works to be completed in the execution of this Contract as described in the Recitals above and Exhibit A (*Design Summary*) attached.

Project Budget - The amount budgeted by the City for the Project and the Work.

<u>Project Schedule -</u> A schedule, prepared and maintained by CM at Risk, describing the sequence and duration of the activities comprising the CM at Risk's plan to accomplish the Work within the Contract Times.

<u>Project Team</u> – Preconstruction phase services team consisting of the Design Professional, CM at Risk, City's Designated Project Manager, and other stakeholders who are responsible for making decisions regarding the Project.

<u>Schedule of Values (SOV)</u> – Document specified in the Construction Services Agreement, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

<u>Shop Drawings</u> - All drawings, diagrams, schedules, and other data specifically prepared for the Work by the CM at Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

<u>Site</u> – The land or premises on which the Project is located.

<u>Specifications</u> - The part(s) of the Construction Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CM at Risk at any tier to furnish services required as its independent professional associate or consultant with respect to the Project.

<u>Subcontractor</u> - An individual or firm having a direct contract with the CM at Risk or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the preconstruction phase services or construction phase Work at the site for which the CM at Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

<u>Substantial Completion</u> - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. The conditions required to achieve Substantial Completion and agreed upon date of Substantial Completion will be documented in the Construction Agreement NTP Letter.

<u>Supplier</u> - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CM at Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM at Risk or any Subcontractor.

Work - The entire completed construction required to be furnished during the construction phase as shown in the Construction Documents.

#### **ARTICLE 2 – BASIC PRECONSTRUCTION PHASE SERVICES**

#### 2.1 GENERAL

- 2.1.1 The CM at Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Lewisville, Texas would exercise at such time, under similar conditions. The CM at Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.
- 2.1.2 <u>Program Evaluation</u>: As a participating member of the Project Team, the CM at Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.
- 2.1.3 <u>Project Meetings</u>: The CM at Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 The CM at Risk will provide preconstruction phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM at Risk will promptly notify the City in writing whenever the CM at Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM at Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in city council and or community meetings, germane to the Project. The CM at Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

#### 2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM at Risk will prepare a Construction Management Plan (CMP), which shall include the CM at Risk's opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM at Risk may add detail to its previous version of the CMP to keep it current throughout the preconstruction phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical condition, of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM at Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

#### 2.3 PROJECT SCHEDULE

- 2.3.1 The CM at Risk will develop and maintain the Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique. The CM at Risk will use Primavera P6 scheduling software, or City-approved alternative, to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.
- 2.3.2. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.

- 2.3.2.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values but the Project Schedule is not required to be cost-loaded.
- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show Milestones, including Milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CM at Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source. Anticipated rain delay days will be included in Specifications.
- 2.3.3 The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time. Additionally, the Project Schedule shall consider the plant's continuous operation requirements. Any necessary temporary shut-downs, system switches, or other activities impacting treatment plant operations will be included in the Project Schedule.
- 2.3.4 Float time shall be as prescribed below:
- 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM at Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
- 2.3.4.2 The CM at Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
- 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM at Risk, etc.). In such an event, the CM at Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM at Risk throughout the preconstruction phase such that it will not require major changes at the start of the construction phase to incorporate the CM at Risk's plan for the performance of the construction phase Work. The CM at Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM at Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 <u>Project Phasing</u>: If phased construction is deemed appropriate and the City and Design Professional approve, the CM at Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM at Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

#### 2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM at Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM at Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that may be recommended to provide the necessary information for the CM at Risk to construct the Project. Before initiating construction operations, the CM at Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CM at Risk will meet with the Project Team as required to review designs during their development. The CM at Risk will familiarize itself with the evolving documents through the various preconstruction phases. The CM at Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems,

and, labor and material availability. The CM at Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM at Risk will recommend cost-effective alternatives.

- 2.4.4 The CM at Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 <u>Constructability Reviews</u>: The CM at Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 <u>Bidability Reviews</u>: The CM at Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM at Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM at Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM at Risk.
- 2.4.5 <u>Notification of Variance or Deficiency</u>: It is the CM at Risk's responsibility to assist the Design Professional in ascertaining that, in the CM at Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM at Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM at Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 <u>Alternate Systems Evaluations</u>: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM at Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM at Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

#### 2.5 COST ESTIMATES

- 2.5.1 Unless otherwise agreed by both parties, within 28 Days after receipt of the documents for the various phases of design, the CM at Risk shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories except Owner's Contingency included in the GMP Proposal identified in Exhibit C, included herein. The Design Professional and CM at Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM at Risk shall make appropriate recommendations on methods and materials to the City and Design Professional to reduce the cost estimate.
- 2.5.3 In between these Milestone estimates, the CM at Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to design development, value engineering or scope changes. It shall be the responsibility of the CM at Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 If requested by the City, the CM at Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

#### 2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit C herein). CM at Risk must verify with the City the current Exhibit C requirements and procedures when entering into these services.
- 2.6.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the preconstruction phase. Any GMP Proposals submitted by the CM at Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.6.3 <u>Guaranteed Maximum Price</u> is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.3.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.3.2 The General Conditions Costs are a firm fixed lump sum amount and will include bonds and insurance premiums based on the full contract price for construction.
- 2.6.3.3 The Construction Fee is \_9.5 % of the Cost of the Work. The Construction Fee shall be calculated as \_9.5% of the Cost of the Work until final acceptance of GMP, at which time the Construction Fee will be converted to a firm fixed lump sum amount. The Construction Fee includes, but is not limited to: Salaries of Construction Manager's officers, project manager(s), estimators, schedulers, and all other employees not stationed at the Project site and performing services directly related to the Project; All overhead, labor or general expenses of any kind unless specifically allowed under General Conditions; subcontractor default insurance program (sometimes referred to as SUBGUARD) and all associated administration costs.
- 2.6.3.4 CM at Risk's Contingency is an amount the CM at Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, subject to approval by the City, or (2) with written approval of the City for increases in General Condition Costs. CM at Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.CM at Risk's Contingency is separate and unique from Owner's Contingency.
- 2.6.3.5 Taxes are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work. The City enjoys limited tax exemption status. CM at Risk will include tax savings in its cost estimates and GMP. All Subcontractors and Suppliers shall be provided proof of the City's tax exemption and shall pass all tax saving through the CM at Risk and the City.
- 2.6.4 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM at Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM at Risk at the time that Owner's Contingency is used.
- 2.6.5 GMPs are cumulative including CM at Risk Contingency. The amount of CM at Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM at Risk's risk from that point in the project forward.
- 2.6.6 The CM at Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM at Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.
- 2.6.7 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.8 GMP savings resulting from a lower actual project cost than anticipated by the CM at Risk remaining at the end of the project will revert to City.
- 2.6.8.1 GMP Proposal(s) Review and Approval
- 2.6.8.2 The CM at Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM at Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM at Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM at Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.8.3 The City upon receipt of any GMP proposal from the CM at Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the

GMP Proposals.

- 2.6.8.4 If the CM at Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM at Risk to reconfirm its GMP Proposal. The CM at Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of the GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM at Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.
  - (a) Accept the CM at Risk original or revised GMP Proposal, if within the City's budget, without comment.
  - (b) Accept the CM at Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM at Risk that the Project Budget has been increased to fund the differences.
  - (c) Reject the CM at Risk's original or revised GMP Proposal because it exceeds the City's budget, the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM at Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.
- 2.6.8.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM at Risk. The CM at Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

#### 2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. However, all selections for Subcontractors and Suppliers must comply with bidding and procurement obligations pursuant to chapter 2269 of the Texas Government Code. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM at Risk. In any case, the CM at Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.
- 2.7.1.1 The CM at Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). This plan shall include the involvement of City's Designated Representative in the Subcontractor bid evaluation process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.
- 2.7.2 <u>Selection by qualifications and competitive bid</u> The CM at Risk shall apply the Subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).
- 2.7.2.1 The CM at Risk will develop Subcontractor and Supplier interest and solicit bids for the various Work categories in accordance with a delivery method permitted by chapter 2269 and approved by the City.CM at Risk will take reasonable steps to maximize Subcontractor and Supplier participation in any solicitation process.
- 2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM at Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
- 2.7.2.3 The CM at Risk will distribute Drawings and Specifications, and conduct a prebid conference with prospective Subcontractors and Suppliers.
- 2.7.2.4 If the CM at Risk desires to self-perform certain portions of the Work, it shall coordinate with the City's Representative to oversee the opening of bids or proposals to ensure the CM at Risk does not obtain unfair advantage over other bidders or offerors.
- 2.7.2.5 The CM at Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. With City Representative present to witness, the CM at Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM at Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule

to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM at Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

- 2.7.3 The CM at Risk will be required to prepare two different reports on the subcontracting process.
- 2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM at Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subcontract, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor, and (d) trade work and its cost that the CM at Risk intends to self-perform, if any.
- 2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM at Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM at Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM at Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM at Risk and other Project Team members. At the pre-award conference, the CM at Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self- performed Work; (c) review the CM at Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM at Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

#### **ARTICLE 3 – PERIOD OF SERVICES**

- 3.1 The preconstruction phase services described in this Contract will be performed by CM at Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM at Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be an event of default.
- 3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM at Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM at Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Lewisville time) on the day of performance.

#### ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

#### 4.1 CONTRACT AMOUNT

4.1.1 Based on the preconstruction phase services fee proposal submitted by the CM at Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM at Risk a lump sum fee in the amount of \$449,816.00.

Total Contract Amount, not to exceed,

#### <u>\$449,816.00</u>

#### 4.2 PAYMENTS

4.2.1 Requests for monthly payments by the CM at Risk for preconstruction phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period,

a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

- 4.2.2 The fees for additional preconstruction phase services provided by the CM at Risk and any Subcontractors or Subconsultants will be based upon the hourly rate schedule included as Exhibit D, attached.
- 4.2.3 The CM at Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM at Risk has received payment for those services from the City. In no event will the City pay more than 95 percent of the Contract Amount until final acceptance of all preconstruction phase services, and award of the approved GMP for the entire Project by City Council.
- 4.2.4 THE CM AT RISK AGREES THAT NO CHARGES OR CLAIMS FOR COSTS OR DAMAGES OF ANY TYPE WILL BE MADE BY IT FOR ANY DELAYS OR HINDRANCES BEYOND THE REASONABLE CONTROL OF THE CITY DURING THE PROGRESS OF ANY PORTION OF THE SERVICES SPECIFIED IN THIS CONTRACT. SUCH DELAYS OR HINDRANCES, IF ANY, WILL BE SOLELY COMPENSATED FOR BY AN EXTENSION OF TIME FOR SUCH REASONABLE PERIOD AS MAY BE MUTUALLY AGREED BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED, HOWEVER, THAT PERMITTING THE CM AT RISK TO PROCEED TO COMPLETE ANY SERVICES, IN WHOLE OR IN PART AFTER THE DATE TO WHICH THE TIME OF COMPLETION MAY HAVE BEEN EXTENDED, WILL IN NO WAY ACT AS A WAIVER ON THE PART OF THE CITY OF ANY OF ITS LEGAL RIGHTS HEREIN.
- 4.2.5 If any service(s) executed by the CM at Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM at Risk, the CM at Risk is to be paid for the services performed prior to the abandonment or suspension.

#### ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City will furnish the following information:
- 5.1.1 One copy of data the City determines pertinent to the work. However, the CM at Risk will be responsible for requesting information it deems reasonably required for the Project.
- 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
- 5.1.3 The name of the City employee or City's representative who will serve as the City's Designated Project Manager during the term of this Contract. The City's Designated Project Manager has the authority to administer this Contract and will monitor the CM at Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the City's Designated Project Manager.
- 5.2 The City additionally will:
- 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM at Risk for its information.
- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM at Risk except for those copies whose cost has been reimbursed by the City.
- 5.2.3 Provide the CM at Risk with adequate information in its possession or control regarding the City's requirements for the Project.
- 5.2.4 Give prompt written notice to the CM at Risk when the City becomes aware of any default or defect in the Project or nonconformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM at Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM at Risk's receipt of such notice.
- 5.2.5 Notify the CM at Risk of changes affecting the budget allocations or schedule.
- 5.3 The City's Designated Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Designated Project Manager deems appropriate to the CM at Risk.

#### ARTICLE 6 – CONTRACT CONDITIONS

#### 6.1 PROJECT DOCUMENTS AND COPYRIGHTS

6.1.1 <u>City Ownership of Project Documents:</u> All Deliverables (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract are to be and remain the property of the City

and are to be delivered to the City's Designated Project Manager before final payment is made to the CM at Risk. Nonetheless, in the event these Deliverables are altered, modified or adapted without the written consent of the CM at Risk, which consent the CM at Risk will not unreasonably withhold, the City agrees to hold the CM at Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Deliverables.

- 6.1.2 <u>CM at Risk to Retain Copyrights</u>: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM at Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM at Risk, but will remain available for use by the City for this Project under the terms of this Contract.
- 6.1.3 <u>License to City for Reasonable Use:</u> The CM at Risk hereby grants, and will require its Subconsultants to grant, an irrevocable license to the City, its agents, employees, and representatives to reasonably use, make copies, and distribute as appropriate the Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Deliverables, then paragraph 6.1.1 applies.

#### 6.2 COMPLETENESS AND ACCURACY OF CM AT RISK'S WORK

6.2.1 The CM at Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other preconstruction phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables.

#### 6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of Work results in a substantial change in this Contract, a Change Order or amendment will be approved and executed by the City and the CM at Risk. Such Change Order or amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM at Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 Work or material(s) furnished by the CM at Risk without such prior written authorization will be the CM at Risk's sole jeopardy, cost, and expense, and the CM at Risk hereby agrees that no claim for compensation for such work or materials furnished will be made.

#### 6.4 DATA CONFIDENTIALITY & DISCLOSURE

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM at Risk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM at Risk in connection with the CM at Risk's performance of this Contract is subject to disclosure as may be required by the Texas Public Information Act.
- 6.4.3 Except as may be required by law, the CM at Risk will not divulge data to any third party without prior written consent of the City. The CM at Risk will not use the data for any purposes except to perform the services required under this Contract. The prohibition in this section 6.4.3 will not apply to the following data:
- 6.4.3.1 Data which was known to the CM at Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.
- 6.4.3.2 Data which was acquired by the CM at Risk in its performance under this Contract and which was disclosed to the CM at Risk by a third party, who to the best of the CM at Risk's knowledge and belief, had the legal right to make such disclosure and the CM at Risk is not otherwise required to hold such data in confidence; or
- 6.4.4 In the event the CM at Risk is required or requested to disclose data to a third party, or any other information to which the CM at Risk became privy as a result of any other contract with the City, the CM at Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM at Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CM at Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CM at Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to

compensate the City if any of the provisions of this section are violated by the CM at Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

#### 6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM at Risk will submit to the City an organization chart for the CM at Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto) that will be involved in performing the services prescribed in the Contract. Unless otherwise informed the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM at Risk desires to change such key personnel from performing such services under this Contract, the CM at Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 6.5.2 The CM at Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM at Risk's staff, the CM at Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

#### 6.6 INDEPENDENT CONTRACTOR

6.6.1 The CM at Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM at Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

#### 6.7 SUBCONSULTANTS

6.7.1 Prior to beginning the Work or Deliverable, the CM at Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

#### 6.8 TERMINATION

- 6.8.1 The City and the CM at Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or remove from the CM at Risk's scope of work any or all services provided for in this Contract.
- 6.8.2 In the event the City terminates or descopes any or all of the services or any part of the services as herein provided, the City will so notify the CM at Risk in writing, and the CM at Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.8.3 The CM at Risk, upon such termination or reduction in scope, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.
- 6.8.4 The CM at Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM at Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CM at Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

#### 6.9 DISPUTES

6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or its designee.

#### 6.10 WITHHOLDING PAYMENT

6.10.1 The City reserves the right to withhold funds from the progress payments up to the amount equal to the claims the City may have against the CM at Risk, until such time that a settlement on those claims has been reached.

#### 6.11 RECORDS/AUDIT

- 6.11.1 Records of the CM at Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM at Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City reserves the right to audit the CM at Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM at Risk's records, the audit discloses the CM at Risk has provided false, misleading, or inaccurate cost and pricing data.
- 6.11.2 The CM at Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data.

#### 6.12 INDEMNIFICATION

6.12.1 The CM at Risk agrees to defend, indemnify and hold harmless the City of Lewisville, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverables done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workers' Compensation Law, or arising out of the failure of the CM at Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM at Risk will be responsible for primary loss investigation, defense, and judgment costs where this Contract of indemnity applies. In consideration of the award of this contract, the CM at Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the CM at Risk for the City.

#### 6.13 NOTICES

6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	City of Lewisville Public Services 1100 N. Kealy, Suite D Lewisville, TX ZIP 75057
To CM at Risk	Archer Western Construction 1411 Greenway Drive Irving, TX 75038
Copy to: Design Professional (if applicable)	(name) HDR Engineering, Inc. Attn: Joel Cantwell, PE 17111 Preston Road, Suite 300 Dallas, Texas 75248

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

#### 6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

6.14.1 The CM at Risk will comply with the provisions of this Contract, pertaining to discrimination and accepting applications or hiring employees. The CM at Risk will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM at Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM at Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into

by the CM at Risk.

#### 6.15 COMPLIANCE WITH FEDERAL LAWS

6.15.1 The CM at Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM at Risk agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

#### 6.16 CONFLICT OF INTEREST

6.16.1 To evaluate and avoid potential conflicts of interest, the CM at Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM at Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM at Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Lewisville Attn: Purchasing Manager ADDRESS Lewisville, TX ZIP

- 6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:
  - (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.
  - (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
  - (c) Using data to produce income for the CM at Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.
- 6.16.3 The CM at Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM at Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.
- 6.16.4 The CM at Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

#### 6.17 CONTRACTOR'S LICENSE

6.17.1 Prior to award of the Contract, the CM at Risk must provide to the City's Designated Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

#### 6.18 SUCCESSORS AND ASSIGNS

6.18.1 The City and the CM at Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM at Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

#### 6.19 FORCE MAJEURE

6.19 The CM at Risk shall be entitled to an extension of the Contract Time, following transmittal of a contractually compliant notice to the City, should an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the CM at Risk, or any Subcontractors and Suppliers result in delay to the critical path of the Project. The CM at Risk and any Subcontractors shall immediately notify the City of Lewisville Project Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

#### 6.20 COVENANT AGAINST CONTINGENT FEES

6.20.1 The CM at Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Lewisville has any interest, financially, or otherwise, in the firm. The City of Lewisville will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 6.21 NON-WAIVER PROVISION

6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

#### 6.22 JURISDICTION

6.22.1 This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. Under the provisions of Chapter 271 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's governmental immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court.

#### 6.23 SURVIVAL

6.23.1 All warranties, representations, and indemnifications by the CM at Risk will survive the completion or termination of this Contract.

#### 6.24 MODIFICATION

6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

#### 6.25 SEVERABILITY

6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

#### 6.26 INTEGRATION

6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

#### 6.27 TIME IS OF THE ESSENCE

6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

#### 6.28 THIRD PARTY BENEFICIARY

6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM at Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM at Risk and not for the benefit of anyother party.

#### 6.29 COOPERATION AND FURTHER DOCUMENTATION

6.29.1 The CM at Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

#### 6.30 CONFLICT IN LANGUAGE

6.30.1 All work or Deliverables performed will conform to all applicable City of Lewisville codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

#### ARTICLE 7 – INSURANCE REQUIREMENTS

The CM at Risk. Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM at Risk, its agents, representatives, employees, or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants

contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM at Risk from liabilities that might arise out of the performance of the work under this Contract by the CM at Risk, his agents, representative, employees, or Subconsultants. CM at Risk is free to purchase such additional insurance as may be determined necessary.

#### 7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

- 7.1.1 CM at Risk will provide coverage at least as broad and with limits of liability not less than those stated below.
- 7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$6,000,000
Products-Completed Operations Aggregate	\$3,000,000
Personal & Advertising Injury	\$3,000,000
Each Occurrence	\$3,000,000

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Lewisville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM at Risk". Policy shall contain waiver of subrogation against the City of Lewisville.
- 7.1.1.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)

\$3.000.000

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Lewisville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM at Risk", including automobiles owned, leased or hired or borrowed by the CM at Risk".
- 7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

(a) Policy shall contain waiver of subrogation against the City of Lewisville.

#### 7.2 ADDITIONAL INSURANCE REQUIREMENTS

- 7.2.1 The policies shall include, or be endorsed to include, the following provisions.
- 7.2.2 On insurance policies where the City of Lewisville is named as additional insured, the City of Lewisville shall be an additional insured to the full limits of liability purchased by the CM at Risk even if those limits of liability are in excess of those required by this Contract.
- 7.2.3 The CM at Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 7.2.4 Coverage provided by the CM at Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

#### 7.3 SUBCONSULTANT INSURANCE

7.3.1 CM at Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM at Risk, however, subconsultants limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate

#### 7.4 NOTICE OF CANCELLATION

7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to

the City's Purchasing Manager at:

City of Lewisville Attn: Earl Whitaker 151 W. Church St. Lewisville, TX 75057

#### 7.5 ACCEPTABILITY OF INSURERS

7.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Texas, and with an "A.M. Best" rating of not less than A-.. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM at Risk from potential insurer insolvency.

#### 7.6 VERIFICATION OF COVERAGE

- 7.6.1 The CM at Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- 7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

#### 7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on\_\_\_\_\_

CITY OF LEWISVILLE, TEXAS

BY:

Printed Name

Title

ATTEST: THOMAS HARRIS III, CITY SECRETARY

Signature

APPROVED AS TO FORM: LIZBETH PLASTER, CITY ATTORNEY CM at Risk Archer Western Construction, LLC

BY J. Polak

Printed Name BGL/Vice President

Title

Signature

#### **EXHIBIT A – PROJECT DESCRIPTION**

Following is a brief description of the Project for which the preconstruction phase service services specified in this Contract are to be performed:

#### BACKGROUND

The City of Lewisville (City) owns and operates the Prairie Creek Wastewater Treatment Plant (PCWWTP), which is currently permitted to treat an annual average daily flow (AADF) of 12 million gallons per day (mgd) and a peak two-hour (P2H) flow of 30 mgd. The current AADF (9.1 mgd) is at 75 percent of the plant design capacity and triggers the need for a capacity expansion study as required by Texas Commission on Environmental Quality (TCEQ) regulations. It is anticipated that the next permit cycle in 2026 may include ammonia discharge limits along with higher flow capacities. The recent 2018 Wastewater Collection System Master Plan determined a future build-out AADF of 19.6 mgd.

The PCWWTP has a permitted design capacity of 12 mgd annual average daily flow (AADF). The existing wastewater process includes influent screening and grit removal, three different forms of secondary treatment in parallel, tertiary filtration, disinfection, and solids storage, handling, and disposal. The three secondary processes (Plants I, II, and III) are not designed to meet the upcoming ammonia limits. Thus, the purpose of the project is to upgrade the secondary treatment process to treat future buildout flows (20 mgd AADF) and meet ammonia and future phosphorus limits.

#### **OBJECTIVES & PURPOSE**

The purpose of this project is to construct an expansion of the Plant II aeration basins at the City of Lewisville's Prairie Creek Wastewater Treatment Plant PCWWTP. This project was recommended in the capital improvements plan developed by HDR as part of the 2020 Prairie Creek Wastewater Treatment Plant Master Plan (Master Plan). The project is urgently needed to increase the capacity to treat higher wastewater flows due to population growth. The secondary treatment process also needs to be upgraded to meet upcoming ammonia discharge limits and prepare for potential phosphorus discharge limits in the future.

The primary objective of the Prairie Creek Wastewater Treatment Plant (PCWWTP) Plant II Aeration Basin Expansion Project is to increase the capacity of the Plant II aeration basins to 20 mgd AADF to allow the aging Plants I and III to be decommissioned. The project will also include improvements for the secondary treatment system to meet more stringent discharge limits, including an upcoming ammonia limit and future phosphorus limit.

#### PRELIMINARY DESIGN

Two aeration basin configuration alternatives to meet the project objectives were developed and evaluated in consultation with City staff. After a detailed evaluation involving both cost and non-cost factors, Alternative 2 was selected for the project. The selected configuration, in addition to having a lower construction cost, allows the plant to more easily maintain treatment and meet discharge permit requirements during construction and be expanded in the future if growth exceeds projections.

The following facilities will be constructed as part of this project:

- Aeration Basin Distribution Structure to control the flow split to eight aeration basins
- Modifications to the existing Aeration Basins No. 1-4 to add anoxic zones and treat 1.5 mgd per basin (6 mgd total)
- Aeration Basins No. 5-8 with a deeper side water depth to treat 3.5 mgd per basin (14 mgd total)
- · Secondary Clarifier Distribution Structure to control the flow split of effluent from all aeration basins to the four existing Secondary Clarifiers
- Blower Building No. 2 to house eight new turbo blowers to supply aeration air to all eight aeration basins at a higher efficiency than existing blowers
- Modifications to the existing RAS/WAS Pump Station to increase pumping capacity to meet the higher treatment capacity, including
  replacement of all RAS pumps and automation of the WAS control
- Yard piping, drainage, and paving improvements to support the new facilities
- Demolition of the existing Plant III facilities that are near the end of their service life to create space for the new improvements and improve site safety and aesthetics

# EXHIBIT B – Construction Services Agreement

# **Exhibit B**

# **CITY OF LEWISVILLE, TEXAS**

# PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION

CONSTRUCTION MANAGER AT RISK CONSTRUCTION PHASE SERVICES

CONTRACT NO. XXXX

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# **CITY OF LEWISVILLE**

# PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION

# **CONSTRUCTION MANAGER AT RISK**

# CONSTRUCTION SERVICES

GMP No. X

Project No. \_\_\_\_\_ Contract No. XXXX

**THIS AGREEMENT**, made and entered by and between City of Lewisville, hereinafter designated the "City" and \_\_\_\_\_\_, hereinafter designated the "Construction Manager at Risk" or "CM at Risk"

# Recitals

- **A.** The City Manager of the City of Lewisville, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for construction services.
- **B.** The City has entered into a separate contract with the Design Professional to design for construction the <u>Prairie Creek WWTP Plant II Aeration Basin Expansion</u> as described in Exhibit A (*Design Summary*) attached, hereinafter referred to as the "Project".
- **C.** The City has previously entered into the Preconstruction Agreement with the Construction Manager at Risk for the performance of preconstruction services for the Project. Preconstruction services may continue during the performance of construction phase services as needed.
- **D.** This Construction Agreement extends the Construction Manager at Risk's obligations beyond preconstruction services into the construction of the Project.

*NOW THEREFORE*, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM at Risk as follows:

# Article 1 - Definitions

<u>"Construction Agreement" ("Contract")</u> means this written document signed by the City and CM at Risk covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. The terms Agreement and Contract shall be used interchangeably throughout unless specifically stated otherwise.

<u>"Change Directive"</u> means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Certificate of Substantial Completion" has the meaning given such term in Subsection 4.1.5.

<u>"Change Order"</u> – A written instrument issued after execution of the Contract Documents signed by the City and CM at Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or the Work; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

"Owner" means the City of Lewisville.

"City's Representative" means the person designated in Subsection 8.3.1.2.

"City's Senior Representative" means the person designated in Subsection 8.3.1.1.

"CM at Risk" means the firm selected by the City to provide construction services as detailed in this Agreement.

<u>"CM at Risk's Contingency"</u> means a fund to cover cost growth during the project used at the discretion of the CM at Risk usually for costs that result from project circumstances. The amount of the CM at Risk's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM at Risk's Contingency is described in Subsection 5.1.2.3.

"CM at Risk's Representative" means the person designated in Subsection 8.3.2.2.

"CM at Risk's Senior Representative" means the person designated in Subsection 8.3.2.1.

<u>"Construction Documents</u>" The drawings and specifications prepared, signed and sealed by the Design Professional and issued for construction.

<u>"Construction Fee"</u> means the lump sum amount for CM at Risk's administrative costs, home office overhead, and profit, whether at the CM at Risk's principal or branch offices.

<u>"Contract Documents"</u> means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders; (ii) the Preconstruction Contract, including all exhibits and attachments; (iii) Construction Documents; (iv) Guaranteed Maximum Price Amendment(s), performance and payment bonds.

"Contract Price" means the amount or amounts set forth in Article 5.

<u>"Contract Time"</u> means the period of time set forth in Article 4, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Project.

<u>"Cost of the Work"</u> means the direct costs necessarily incurred by the CM at Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary

facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM at Risk's Construction Fee, General Conditions Costs, and taxes.

<u>"Critical Path"</u> means the longest sequence of construction activities which establishes the minimum overall project duration.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

<u>"Design Professional"</u> means the licensed engineering or architectural firm who furnishes design and/or construction administration services required for the Project.

<u>"Differing Site Conditions"</u> means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

<u>"Engineer"</u> means the licensed person, firm or corporation who furnishes engineering services required for the Project.

"Final Acceptance" means the completion of the Work as prescribed in Section 4.2.

<u>"Float"</u> means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

<u>"General Conditions Costs"</u> includes, but is not limited to, the following types of costs for the CM at Risk during the construction phase: (i) payroll costs for project manager or CM at Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen at the site, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment, and minor expenses, (vi) cost of utilities, fuel, sanitary facilities, telephone and data services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, and (ix) costs of consultants not in the direct employ of the CM at Risk or Subcontractors.

# "Guaranteed Maximum Price" or "GMP"

The maximum total amount of money that the City agrees to pay the CM at Risk for construction phase services.

"GMP Amendment" means an amendment, executed in writing and signed by both parties, to the GMP.\_

<u>"GMP Plans and Specifications"</u> means the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP Proposal.

<u>"Legal Requirements"</u> means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

<u>Milestones</u> - A principal event in the performance of the Work that the Contract requires CM at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

<u>"Notice to Proceed" or "NTP"</u> means the directive issued by the City, authorizing the CM at Risk to start Work. Such notice shall be provided to the CM at Risk at least seven days prior to the commencement date stipulated herein and shall be provided no later than 30 days after the GMP Proposal is approved by the City and all the required documentation is received by the City.

<u>"Owner's Contingency"</u> means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount

of the Owner's Contingency will be set solely by the Owner and will be in addition to the Project costs included in the CM at Risk's GMP packages. Use and management of the Owner's Contingency is described in Subsection 5.1.3.

<u>"Payment Request"</u> means the City form used by the CM at Risk to request progress payments for Work in accordance with Article 7.

<u>"Performance Period"</u> means the period of time allotted in the Contract Documents to substantially complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP Proposal and shown on the Project Schedule.

<u>"Product Data"</u> means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM at Risk to illustrate materials or equipment for some portion of the Work.

<u>"Project"</u> means the Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit A attached.

"<u>Project Schedule</u>" means a schedule, prepared and maintained by CM at Risk, describing the sequence and duration of the activities comprising the CM at Risk's plan to accomplish the Work within the Contract Times.

"Project Record Documents" means the documents created pursuant to Section 2.10.

<u>"Samples"</u> means physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be evaluated.

<u>"Schedule of Values"</u> means a document which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

<u>"Shop Drawings</u>" mean drawings, diagrams, schedules, and other data specially prepared for the Work by the CM at Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

<u>"Site"</u> means the land or premises on which the Project is located generally described as Prairie Creek Wastewater Treatment Plant.

<u>"Specifications"</u> means the part(s) of the Construction Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto as listed in the GMP Proposal.

<u>"Subcontractor"</u> means an individual or firm having a direct contract with the CM at Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM at Risk is responsible.

<u>"Subconsultant"</u> - A person, firm or corporation having a contract with the CM at Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

"<u>Sub-subcontractor or -consultant</u>" – An individual or firm having a direct contract with any Subcontractor or any other individual firm having a contract with aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM at Risk is responsible or furnishes services required as its independent profession associate or consultant with respect to the Project, as applicable. <u>"Substantial Completion"</u> means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes.

<u>"Supplier"</u> means a manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CM at Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM at Risk or any Subcontractor.

<u>"Work"</u> means the entire completed construction or the various separately identifiable parts thereof as required by the Construction Documents.

# Article 2 - CM at Risk's Services and Responsibilities

2.0 The CM at Risk shall furnish all labor, materials, equipment, transportation, utilities, services, and facilities required to perform all Work required by the Contract Documents, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike manner and in strict compliance with the Contract Documents.

## 2.1. Software and Technology Services

- 2.1.1. CM at Risk's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM at Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM at Risk. CM at Risk's Representative may be replaced only with the written consent of City.
- 2.1.2 Approved Alternate Information System
- **2.1.2.1** CM at Risk may utilize, with City approval, any industry standard web-based project management information system that has capabilities and access equal to the City's system.
- **2.1.2.2** The CM at Risk shall provide training for City staff and City-designated supporting personnel as needed.
- 2.1.3 Hardware provided by the CM at Risk shall be capable of network printing up to and including C- size paper, color printing, and faxing. The CM at Risk will be required to establish broadband connectivity to the web-based ASP, PROMIS or approved alternate information system, and maintain this connectivity for the duration of the Project construction phase.
- 2.1.4 The CM at Risk shall furnish this computerized office platform with fully licensed software. Software shall be compatible with City software standards and should include but not be limited to word processing, scheduling, budgeting, e-mailing, AutoCad2000®, Imaging software from Adobe®, and an internet browser.
- **2.1.5** Software shall include capability and function to store, backup, and maintain the electronic documents generated.
- **2.1.6** The CM at Risk will endeavor to maintain and utilize electronic mail for correspondence and maintain correspondence records in this electronic PROMIS or approved alternate information system.

## 2.2 Government Approvals and Permits

- **2.3.1** Unless otherwise provided, CM at Risk shall obtain or assist the City to obtain all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project.
- **2.3.2** Copies of permits and notices must be provided to the City's Representative prior to starting the permitted activity.
- **2.3.3** Costs for permit(s) fees for building and demolition, grading and drainage, water, sewer rightof-way, and landscaping, as well as utility design fees for permanent services, shall be paid by the City.

2.3.4 CM at Risk shall be responsible for all other permits and review fees not specifically listed in Subsection 2.3.3 above. CM at Risk is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM at Risk's responsibility.

## 2.4 Preconstruction Conference

- **2.4.1** Prior to the commencement of any Work, the City's Representative will schedule a preconstruction conference.
- **2.4.2** The purpose of this conference is to establish a working relationship between the CM at Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required, and emergency telephone numbers for all representatives involved in the course of construction.
- **2.4.3** The Notice to Proceed will be issued confirming the construction start date, Performance Period, and, the Substantial Completion date, and the conditions required to achieve Substantial Completion.
- **2.4.4** The CM at Risk shall provide a Schedule of Values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CM at Risk's Contingency.
- **2.4.5** CM at Risk's minimum attendance obligation at the preconstruction conference shall be the CM at Risk's Representative, the job superintendent, and the CM at Risk's safety officer.

## 2.5 Control of the Work

- **2.5.1** CM at Risk shall provide all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CM at Risk to complete the Work in accordance with the Contract Documents.
- **2.5.2** CM at Risk shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. CM at Risk shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction. Sequencing of construction is subject to coordination with requirement for the facility to remain operational throughout construction.
- **2.5.3** The CM at Risk's Representative or other authorized representative shall be present at the Site at all times that construction activities are taking place.
- **2.5.3.1** All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

- **2.5.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM at Risk's responsibility to ensure the CM at Risk personnel and/or Subcontractor employed for such Work is approved by the manufacturer.
- **2.5.5** Prior to commencement of the Work or any portion thereof, the CM at Risk shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City for resolution before proceeding with the Work.
- **2.5.6** The CM at Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM at Risk with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once.
- 2.5.7 The CM at Risk shall establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas.
- 2.5.8 Any person employed by the CM at Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM at Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The CM at Risk or Subcontractor shall keep the City harmless from damages or claims which may occur in the enforcement of this Section.
- 2.5.9 CM at Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10 CM at Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM at Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- **2.5.11** In the event of noncompliance with this Section, the City may require the CM at Risk to stop or suspend the Work in whole or in part, until such time as the CM at Risk cures the noncompliance or said noncompliance is resolved by the City with all costs, expenses, and damages arising therefrom to be reimbursed by the CM at Risk.

# 2.6 Control of the Work Site

- 2.6.1 Throughout all phases of construction CM at Risk shall keep the Site reasonably free from debris, trash, and construction wastes to permit CM at Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM at Risk shall remove any remaining debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.
- **2.6.2** CM at Risk shall take all reasonable steps, procedures, or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the local requirements. CM at Risk shall

adhere to any additional, specific dust and debris containment requirements as defined in Contract Documents.

- 2.6.3 CM at Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM at Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.6.4 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM at Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM at Risk.

# 2.7 Shop Drawings, Product Data and Samples

- **2.7.1** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM at Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.7.2 The CM at Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents so as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM at Risk, which are not required by the Contract Documents, may be returned without action.
- **2.7.3** The CM at Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.
- 2.7.4 By approving, verifying, and submitting Shop Drawings, Product Data, Samples, and similar submittals, the CM at Risk represents that the CM at Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.7.5 The CM at Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City 's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM at Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CM at Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval thereof.
- **2.7.6** The CM at Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.
- **2.7.7** Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- **2.7.8** When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## 2.8 Quality Control, Testing and Inspection

**2.8.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

- **2.8.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.
- **2.8.3** The City will select and pay for the services of an independent testing laboratory utilizing procedures and methods for sampling and testing to be determined by the City and the testing laboratory.
- **2.8.4** Where the Contract Documents require material testing, the CM at Risk shall notify the City's Representative, the Engineer, and the testing laboratory of the readiness of the Work for such testing.
- **2.8.4.1** Should any tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM at Risk. CM at Risk's Contingency cannot be utilized for the cost of re-testing.
- **2.8.4.2** When the any tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency. City may waive this requirement, in writing, at its sole discretion.
- **2.8.5** The CM at Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- **2.8.6** At the option of the City, materials may be approved at the source of supply before delivery is started.
- **2.8.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM at Risk as a Cost of the Work, unless otherwise provided in the Contract Documents.
- **2.8.8** CM at Risk's convenience and quality control testing and inspections shall be the sole responsibility of the CM at Risk and paid by the CM at Risk. The use of a testing laboratory does not relieve nor eliminate the CM at Risk

## 2.9 Trade Names and Substitutions.

- **2.9.1** Construction Document references to equipment, materials, or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute, or alternate items may be permitted, subject to the following:
- **2.9.2** The substitution shall be submitted by CM at Risk in writing to the City.
- **2.9.3** The CM at Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- **2.9.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- **2.9.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

- **2.9.6** The CM at Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- **2.9.7** The City will make the final decision and will notify the CM at Risk in writing as to whether the substitution has been accepted or rejected. If the City does not respond in a timely manner, the CM at Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

## 2.10 Project Record Documents

- **2.10.1** During the construction period, the CM at Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.
- **2.10.1.1** The CM at Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents, giving particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
  - Dimensional changes to the drawings.
  - Revisions to details shown on drawings.
  - Depths of foundations below first floor.
  - Locations and depths of underground utilities.
  - Revisions to routing of piping and conduits.
  - Revisions to electrical circuitry.
  - Actual equipment locations.
  - Duct size and routing.
  - Locations of concealed internal utilities.
  - Changes made by Change Order.
  - Details not on original Contract Drawings.
- **2.10.1.2** Mark completely and accurately Project Record Document prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.
- **2.10.1.3** Mark Project Record Documents sets with red erasable colored pencil.
- **2.10.1.4** Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- **2.10.1.5** The CM at Risk shall as a condition of Substantial Completion, submit Project Record Documents and Shop Drawings prints to the City or its representative for review and comment.
- **2.10.2.** Upon receipt of the reviewed Project Record Documents from the City, the CM at Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:
- **2.10.2.1** A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with City of Lewisville technology. The Design Professional will provide files of the original Construction Documents to the CM at Risk for the use of preparing these final Project Record Documents or the CM at Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

**2.10.2.2** The original copy of the Project Record Documents (redline mark-ups).

# 2.11 Project Safety

- **2.11.2.** CM at Risk shall perform the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- **2.11.3.** CM at Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.4. CM at Risk shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM at Risk's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- **2.11.5.** The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM at Risk's personnel, Subcontractors, and others as applicable.
- **2.11.6.** CM at Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- **2.11.7.** CM at Risk will immediately report in writing any safety-related injury, loss, damage, or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.8. CM at Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## 2.12 Warranty

- **2.12.2.** CM at Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- **2.12.3.** CM at Risk's warranty obligation excludes defects caused by abuse, alterations, or wear and tear to the Work by persons other than CM at Risk or anyone for whose acts CM at Risk may be liable.
- **2.12.4.** CM at Risk's warranty obligation shall be for two years from the date of Substantial Completion of the entire Work.

Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM at Risk will provide City with all manufacturers' warranties upon Substantial Completion.

# 2.13 Correction of Defective Work

- 2.13.1. CM at Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- **2.13.2.** CM at Risk shall take meaningful steps to commence correction of nonconforming Work within seven Days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM at Risk fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM at Risk with written notice that City may commence correction of such nonconforming Work with its own forces or by separate contractor.
- **2.13.3.** CM at Risk shall be responsible for all Costs and expenses incurred by City arising from CM at Risk's failure to correct nonconforming work in accordance with this section.
- **2.13.4.** If the nonconforming Work creates an emergency requiring an immediate response, the CM at Risk will respond and initiate corrections within twenty-four hours.
- **2.13.5.** The one-year period referenced in Subsection 2.12.1 above applies only to CM at Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM at Risk's other obligations under the Contract Documents.

# 2.14. Dust Control & Prevention

CM at Risk shall submit the following documentation to the City's Representative at the preconstruction meeting prior to conducting any earth moving or dust generating activities under the Contract.

- a. Copy of the Dust Control Plan applicable to the work or services under the Contract.
- b. Documentation that all of Contractor's on-site project managers have received at least one hour of dust control training.

For construction sites where 5-acres or more are disturbed, or where more than 10,000 cubic yards of materials will be removed from the site, CM at Risk shall designate, and identify to the City, an individual who has completed the dust control training set forth in Section b above as the site dust manager. The dust manager shall be present on-site at least four hours each day that earth moving or dust generating activities are occurring until all ground surfaces at the site have been stabilized.

CM at Risk agrees to indemnify and reimburse the City for any fine, penalty, fee or monetary sanction imposed on the City arising out of or caused by the performance of work or services under the Contract. Contractor shall remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

## 2.15. Leadership in Energy & Environmental Design

The CM at Risk shall provide an easily accessible area to serve the construction site and is dedicated to the separation, collection, and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The CM at Risk must provide documentation that the materials have been taken to an approved recycling facility.

# 3.1 Duty to Cooperate.

- **3.1.1** City shall, throughout the performance of the Work, cooperate with CM at Risk and perform its responsibilities, obligations, and services in a timely manner to facilitate CM at Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM at Risk's performance of its obligations under the Contract Documents.
- **3.1.2** City shall furnish at the CM at Risk's request, at no cost to the CM at Risk, a CADD file of the Construction Documents in AutoCAD format compatible with City of Lewisville CADD technology.
- **3.1.3** The City will provide training in the use and operation of the PROMIS system.

# 3.2 City's Representative

- **3.2.1** City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM at Risk to fulfill its obligations under the Contract Documents.
- **3.2.2** City's Representative shall also provide CM at Risk with prompt notice if it observes any failure on the part of CM at Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.
- **3.2.3** The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM at Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to Subsection 2.8.4.
- **3.2.3.1** Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.
- **3.2.3.2** The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
- **3.2.3.3** The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman for the CM at Risk.
- **3.2.3.4** The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.
- **3.2.3.5** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures, or for safety precautions or programs or responsibility for the CM at Risk's failure to perform the work in accordance with Contract Documents.

# 3.3 Design Professional Services

**3.3.1** The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM at Risk. The CM at Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.
- **3.3.2** The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.
- **3.3.2.1** Provide oversight of the Work. The City and CM at Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
- **3.3.2.2** Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.8.
- **3.3.2.3** Review and recommend approval of Payment Requests.
- **3.3.2.4** Review and approve or take other appropriate action upon the CM at Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.
- **3.3.2.5** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM at Risk. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- **3.3.2.6** Prepare Change Orders and may authorize minor changes in the Work as permitted through a Change Directive.
- 3.3.2.7 Conduct inspections to determine Substantial Completion and Final Acceptance.
- **3.3.2.8** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM at Risk.
- **3.4 City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, CM at Risk in order to enable CM at Risk to timely complete the Work consistent with the Contract Documents. CM at Risk agrees to provide reasonable accommodation to any separate contractors and shall not interfere or otherwise impede or damage the work of separate contractors.

#### 3.5 Permit Review and Inspections.

- **3.5.1** If requested by the CM at Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
- **3.5.2** Regulating agencies of the City, such as Development Services, Fire and Planning Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

#### 4.1. Contract Time.

- **4.1.1.** Contract Time shall begin with the commencement date established in the Notice to Proceed and end at Substantial Completion of the entire Work.
- **4.1.2.** Each GMP will establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods may not be sequential and may run concurrently.
- **4.1.3.** CM at Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- **4.1.4.** All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

#### 4.2. Substantial Completion

- **4.2.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1.
- **4.2.2.** Prior to notifying the City in accordance to Subsection 4.1.3 below, the CM at Risk shall inspect the Work and prepare and submit to the City a comprehensive punch list of items to be completed or corrected. The CM at Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM at Risk to complete all Work in accordance with the Contract Documents.
- **4.2.3.** CM at Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete.
- **4.2.4.** Within five (5) days of City's receipt of CM at Risk's notice, City and CM at Risk will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents.
- **4.2.5.** If such Work is Substantially Complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM at Risk's responsibility for the Project's security, maintenance, utilities, and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- **4.2.6.** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Subsection 4.1.5 above, (ii) CM at Risk and City have obtained consent of surety, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM at Risk agree that City's use or occupancy will not interfere with CM at Risk's completion of the remaining Work.

**4.3. Final Acceptance.** Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM at Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth in Subsection 4.1.5. The City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.

#### 4.4. Liquidated Damages.

**4.4.1.** CM at Risk recognizes that *time is of the essence* for the CM at Risk to achieve Substantial Completion and City will suffer financial loss if the Work is not completed within the Contract Time. The CM at Risk acknowledges that the damages the City will suffer as a result of delay are and will be difficult to ascertain due to the nature of such damages and also recognizes the delay, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, CM at Risk agrees that as liquidated damages for delay (but not as a penalty), Contractor shall pay City in accordance with the Liquid Damages Cost Table for each day that expires after the Contract Time, as adjusted in accordance with this Contract, until Substantial Completion of the entire Work.

Days Late	Liquidated Damages Per Day
Days 1-7	\$2,500
Days 8-14	\$3,000
Days 15-30	\$3,500
All Days After 30	\$5,000

4.4.1.1. Liquidated Damages Cost Table

- **4.4.2.** The City may at its sole discretion deduct from any monies due, or which may become due, to the CM at Risk, a sum as specified herein, for each and every calendar day that the Work shall remain incomplete. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the City. Liquidated damages are intended to compensate the City for the CM at Risk's failure to meet the deadlines set forth herein, and shall not excuse the CM at Risk from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The CM at Risk agrees that the sums in Section 4.3.1 are reasonable in light of the anticipated or actual harm caused by the delay and breach, the difficulties of the proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.
- **4.4.3.** City's allowance or requirement of the CM at Risk to continue performance of the Work despite the imposition and/or incurrence of Liquidated Damages shall in no way operate as a waiver on the part of the City of any of its rights under the Contract Documents.

#### 4.5. Project Schedule

- **4.5.1.** The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.
- **4.5.2.** The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM at Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.
- **4.5.3.** Updated Project Schedules shall be submitted monthly to the City as part of the Payment Request.
- 4.5.3.1. CM at Risk shall provide City with a monthly status report with each Project Schedule detailing

the progress of the Work, including: (i) if the Work is proceeding according to Project Schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP Proposal and within the Contract Time.

- **4.5.3.2.** With each Project Schedule submittal the CM at Risk shall include a transmittal letter including the following:
  - Description of problem tasks referenced to field instructions, requests for information (RFI's), as appropriate.
  - Current and anticipated delays including:
    - o Cause of the delay
    - o Corrective action and schedule adjustments to correct the delay
    - Known or potential impact of the delay on other activities, Milestones, and the date of Substantial Completion.
  - Changes in construction sequence
  - Pending items and status thereof including but not limited to:
    - Contract Time extension requests
    - o Other items
  - Substantial Completion date status:
    - If ahead of schedule, the number of calendar Days ahead.
    - If behind schedule, the number of calendar Days behind.
  - Other project or scheduling concerns

- **4.5.4.** City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM at Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM at Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.
- **4.5.5.** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- **4.5.5.1.** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.
- **4.5.5.2.** The CPM diagram schedule shall indicate all relationships between activities.
- **4.5.5.3.** The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- **4.5.5.4.** The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.
- **4.5.5.5.** The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- **4.5.5.6.** The Project Schedule shall show Milestones, including Milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM at Risk activities.
- **4.5.5.7.** The Project Schedule shall include a Critical Path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.
- **4.5.6.** The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- **4.5.7.** Float time shall be as prescribed below.
- **4.5.7.1.** The total Float within the overall Project Schedule, is not for the exclusive use of either the City or the CM at Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract Milestones and the Project Contract Time.
- **4.5.7.2.** The CM at Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the Project Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.

Since Float time within the Project Schedule is jointly owned, it is acknowledged that Citycaused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CM at Risk, etc.). In such an event, the CM at Risk shall not be entitled to receive a time extension or delay damages until all Citycaused time savings are exceeded, and the Substantial Completion date is also exceeded. **5.0.** The CM at Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP Proposal.

#### 5.1. Contract Price.

- **5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit B and an amount of **\$\_\_\_\_\_** for Owner's Contingency.
- **5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM at Risk shall be solely responsible for any additional Project costs that exceed the GMP. If the GMP exceeds the actual Cost of the Work savings shall revert to the City.
- **5.1.2.1** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
- **5.1.2.2** The General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the Contract Documents.
- **5.1.2.3** CM at Risk's Contingency is an amount the CM at Risk may be used under the following conditions: (1) upon request by the CM at Risk for increases in the Cost of the Work, subject to written approval by the City, or (2) with written approval of the City for increases in General Condition Costs. CM at Risk's Contingency is assumed to be a direct project cost so has received all markups at the time of GMP submission.
- **5.1.2.3.1** When the CM at Risk utilizes CM at Risk's Contingency funds, the CM at Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM at Risk shall deduct the amount of CM at Risk's Contingency funds used from the CM at Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM at Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- **5.1.2.4** As a City public procurement project this Project is tax exempt. Appropriate tax exemption forms shall be provided to the CM at Risk.
- **5.1.3** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM at Risk, the sum of which will be the total contract price for construction. Markups for Construction Fee and taxes will be applied by the CM at Risk at the time that Owner's Contingency is used.
- **5.1.4** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.
- **5.1.4.1** GMP Amendments are cumulative except for contingency. The amount of contingency for each GMP Amendment will be negotiated separately.
- **5.1.4.2** If the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP Proposal.

#### 6.1. Delays to the Work

- **6.1.1.** If CM at Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM at Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- **6.1.2.** The CM at Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered. In the case of a continuing delay, the CM at Risk shall provide additional notice of the realized delay and request for Change Order within 14 days of the completion of the event of delay.
- **6.1.3.** By way of example, events that will entitle CM at Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, hazardous conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics, pandemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- **6.1.4.** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and that weather conditions had an adverse effect on the scheduled Substantial Completion.
- **6.1.5.** It is understood, however, that permitting the CM at Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- **6.1.6.** In addition to CM at Risk's right to a time extension for those events set forth in this Section, CM at Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM at Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, and other acts of God. In the event of an occurrence under this Section, the CM at Risk shall immediately notify the City and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

#### 6.2 Differing Site Conditions

- 6.2.1 If CM at Risk encounters a Differing Site Condition, CM at Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM at Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 6.2.2 Upon encountering a Differing Site Condition, CM at Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM at Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

#### 6.3 Errors, Discrepancies and Omissions.

6.3.1 If the CM at Risk observes errors, discrepancies, or omissions in the Contract Documents, they shall promptly notify the Design Professional and request clarification.

6.3.2 If the CM at Risk proceeds with the Work affected by such known errors, discrepancies, or omissions, without receiving such clarifications, it does so at its own risk. Adjustments involving such circumstances made by the CM at Risk prior to clarification by the Design Professional shall be at the CM at Risk's risk.

#### 6.4 City Requested Change in Work.

- 6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.
- 6.4.2 Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM at Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.
- 6.4.3 The City will request a proposal for a change in Work from CM at Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreement and memorialized in a Change Order.

#### 6.5. Legal Requirements.

6.5.1. The Contract Price and/or Contract Times shall be adjusted to compensate CM at Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP Proposal, affecting the performance of the Work.

#### 6.6. Change Directives and Change Orders.

- 6.6.1. City and CM at Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.
- 6.6.2. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents.

#### 6.7. Minor Changes in the Work

- 6.7.1. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM at Risk. The CM at Risk shall carry out such written orders promptly.
- 6.7.2. CM at Risk may make minor changes in Work, provided, however that CM at Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM at Risk.
- 6.7.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

#### 6.8. Contract Price Adjustments

- 6.8.1. The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
- **6.8.1.1.** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- **6.8.1.2.** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or

- 6.8.2. Estimated cost of the Work, General Conditions Costs, if applicable, Construction Fee and tax. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP Proposal as shown on Exhibit B.
- 6.8.3. If an increase or decrease cannot be agreed to as set forth in Subsections 6.8.1.1. through 6.8.1.2 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM at Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.8.4. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM at Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.5. If City and CM at Risk disagree upon whether CM at Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM at Risk shall resolve the disagreement pursuant to Article 8 hereof.
- **6.8.5.1.** As part of the negotiation process, CM at Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- **6.8.5.2.** If the parties are unable to agree and City expects the CM at Risk to perform the services in accordance with City's interpretations, CM at Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM at Risk (i) directing CM at Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.8.6. **Emergencies.** In any emergency affecting the safety of persons and/or property, CM at Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

#### Article 7- Procedure for Payment

**7.0.** For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the CM at Risk the actual Cost of the Work and any applicable General Conditions Costs including insurance and bonding and taxes, if any, and the CM at Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.

#### 7.1. GMP Payment Request

- **7.1.1.** At the pre-construction conference prescribed in Section 2.4, CM at Risk shall submit for City's review and approval a Schedule of Values and baseline Project Schedule. The schedule of values and Project Schedule will serve as the basis for monthly progress payments made to CM at Risk throughout the Work.
- **7.1.2.** Preliminary Payment Request: At least ten (10) working days prior to the date established for a Payment Request, the CM at Risk shall submit a preliminary Payment Request and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request. Preliminary Payment Request submissions shall include:
- **7.1.2.1.** CM at Risk's estimate of the amount of Work performed, labor furnished, and materials incorporated into the Work based on the Schedule of Values.
- 7.1.2.2. Updated Project Schedule including the executive summary and all required schedule reports.
- **7.1.2.3.** Any additional documentation the City may require as noted in the General Conditions or other component of the Contract Documents.
- **7.1.3.** Payment Request: As soon as practical, but no later than seven days after receipt of the preliminary Payment Request, the City Representative and other designated project team member(s) will meet with the CM at Risk to review the preliminary Payment Request and observe the progress of Work. Based on this review, the City may require revision to the Payment Request prior to formal submittal and will promptly notify CM at Risk of all required revisions. As soon as practical, CM at Risk will submit Payment Requests reflective of all required revisions.
- **7.1.3.1.** Payment Request submissions shall also include a signed affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the CM at Risk's Payment Request are paid or will be paid within the specified timeline provided in Section 7.6.
- **7.1.3.2.** Within five days of receipt of CM at Risk's formal Payment Request, the City will review the Payment Request and certify that the Payment Request is complete and payable or incomplete and identify what modifications are required. If the submitted request is incomplete, the CM at Risk shall make the required modifications and resubmit Payment Request for processing.
- **7.1.4.** The Payment Request shall constitute CM at Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.

 7.1.5.
 The Payment Request may request payment for stored equipment and materials if construction

 Prairie Creek WWTP Plant II Aeration Basin Expansion, CM at Risk
 Contract No. \_\_\_\_\_, Project No. \_\_\_\_\_

progress is in reasonable conformance with the approved Project Schedule.

- **7.1.5.1.** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore.
- **7.1.5.2.** For materials and equipment stored off the Site and included in Payment Request, the City must approve the storage. The material and equipment must be stored within Denton County and be accessible for City's inspection. The CM at Risk must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site.
- **7.1.5.3.** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- **7.1.6.** CM at Risk shall submit Payment Requests to the City on the monthly anniversary of the construction Notice to Proceed beginning with the first month after the construction Notice To Proceed, Payment Request.
- **7.1.7.** With every Payment Request for the Work, CM at Risk will submit an affidavit stating that the CM at Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes.

#### 7.2. Payment of GMP

- **7.2.1.** City shall make payment in accordance with the provisions of this Contract and Chapter 2251 of the Texas Government Code. Payment will be made no later than thirty-one (31) Days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.
- **7.2.2.** City shall pay CM at Risk all amounts properly due. If City determines that there is an error in the Payment Request and the CM at Risk is not entitled to all or part of a Payment Request, it will notify CM at Risk in writing within twenty-one (21) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM at Risk must take to rectify City's concerns. CM at Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM at Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

#### 7.3. Retention on GMP

- **7.3.1.** City will retain five percent (5%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CM at Risk, upon request of the CM at Risk, City may reduce the amount retained to two and a half percent (2.5%) from CM at Risk's subsequent Payment Requests if the CM at Risk's performance of Work has been satisfactory.
- **7.4. Substantial Completion.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM at Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

#### 7.5. Final Payment

**7.5.1.** After receipt of a final Payment Request, City shall make final payment 60 days after the receipt by the City, provided that CM at Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

- **7.5.2.** At the time of submission of its final Payment Request, CM at Risk shall provide the following information:
- **7.5.2.1.** An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;
- **7.5.2.2.** A general release executed by CM at Risk waiving, upon receipt of final payment by CM at Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and
- **7.5.2.3.** Consent of CM at Risk's surety to final payment.
- **7.5.2.4.** Record Drawings and any documentation required by the Construction Documents, including but not limited to all O&M Manuals, warranties, and record drawings.
- **7.5.2.5.** The provision of the items required by this section 7.5 shall be an express condition precedent to final payment.
- **7.5.2.6.** Acceptance of final payment by CM at Risk expressly waives all claims and causes of action the CM at Risk may have against City.

#### 7.6. Payments to Subcontractors or Suppliers

- 7.6.1. CM at Risk shall pay its Subcontractors or Suppliers within ten (10) Days of receipt of each progress payment from the City. The CM at Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM at Risk shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactory work. CM at Risk shall pay Subcontractors or Suppliers the reduced retention within ten (10) Days of the payment of the reduction of the retention to the CM at Risk. No contract between CM at Risk and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.
- **7.6.2.** If the CM at Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM at Risk agrees that the City may take such actions:
- **7.6.2.1.** To hold the CM at Risk in default under this Agreement;
- **7.6.2.2.** Withhold future payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions;
- **7.6.2.3.** Reject all future offers to perform work for the City from the CM at Risk for a period not to exceed one year from Substantial Completion date of this Project; or
- **7.6.2.4.** Terminate this Agreement.
- **7.6.3.** All funds paid to the CM at Risk are paid in trust and shall be used for payment of the Subcontractors and Suppliers who have performed work on the Project before the CM at Risk may use any of the funds for any other purpose. Nothing in this provision shall prohibit the CM at Risk from withholding any funds in dispute or back charges or offsets under the provisions of the Subcontract. The CM at Risk shall include a trust fund provision in each subcontract requiring the Subcontractor to hold any payment its receives in trust and to use them for payment of its subcontractors and suppliers who have performed work on the Project before Subcontractor may use the funds for any other purpose.

- **7.6.4.** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.
- **7.6.5.** CM at Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

#### 7.7. Record Keeping and Finance Controls

- **7.7.1.** Records of the CM at Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM at Risk shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance of the Project.
- **7.7.2.** The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM at Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.
- **7.7.3.** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM at Risk's records, the audit discloses the CM at Risk has provided false, misleading, or inaccurate cost and pricing data.
- **7.7.4.** The CM at Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- **7.7.5.** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultants' and Subcontractors' contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

#### 8.0. Requests for Contract Adjustments and Relief.

- **8.0.1.** If either CM at Risk or City believes that it is entitled to relief against the other for any event arising out of or related to the Contract, such party shall provide written notice to the other party of the basis for its claim for relief.
- **8.0.2.** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- **8.0.3.** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- **8.0.4.** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

#### 8.1. Dispute Avoidance and Resolution

- 8.1.1. The parties are fully committed to working with each other throughout the Project and agree to always communicate regularly with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM at Risk and City each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- **8.1.2.** CM at Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM at Risk's Representative and City's Representative.
- 8.1.3. If a dispute or disagreement cannot be resolved per 8.1.2, CM at Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. Should this effort be unsuccessful then the parties may proceed to take appropriate action to enforce any rights or obligations pursuant to the provisions of the Contract.
- 8.2. Duty to Continue Performance Unless provided to the contrary in the Contract Documents or as provided by statute, CM at Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM at Risk, pending the final resolution of any dispute or disagreement between CM at Risk and City.

#### 8.3. Representatives of the Parties

#### 8.3.1. City's Representatives

**8.3.1.1.** City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

<mark>XXX</mark>

**8.3.1.2.** City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2 and as otherwise provided herein:

#### <mark>XXXX</mark>

#### 8.3.2. CM at Risk's Representatives

**8.3.2.1.** CM at Risk designates the individual listed below as its Senior Representative ("CM at Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

-----, Title Address City, State Zip Phone Number

**8.3.2.2.** CM at Risk designates the individual listed below as its CM at Risk's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2 and as otherwise provided herein:

-----, Title Address City, State Zip Phone Number

#### 9.0. City's Right to Stop Work

- **9.0.1.** City may, at its discretion and without cause, order CM at Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive Days.
- **9.0.2.** CM at Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City. The CM at Risk acknowledges its obligation to mitigate exposure to costs due to a suspension and, upon notice of an extended suspension, shall meet with City to determine and implement available cost mitigation efforts as well as protection for the Project as may be necessary.

#### 9.1. Termination for Convenience

- **9.1.1.** Upon receipt of written notice to CM at Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM at Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CM at Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to profit or overhead on unperformed Work.
- **9.1.2.** If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3 Upon such termination, the CM at Risk shall proceed with the following obligations.
- 9.1.3.1 Stop Work as specified in the notice.
- 9.1.3.2 Place no further subcontracts or orders.
- 9.1.3.3 Terminate all subcontracts to the extent they relate to the Work terminated.
- **9.1.3.4** Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM at Risk and which the City has or may acquire an interest.
- **9.1.4** The CM at Risk shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.
- **9.1.5** The City shall pay CM at Risk the following:
- **9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
- **9.1.5.2** The reasonable costs and expenses attributable to such termination.
- **9.1.5.3** CM at Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to profit or overhead on unperformed Work.
- **9.1.6** The CM at Risk shall maintain all records and documents for three years after final settlement. These shall be maintained and subject to auditing as prescribed in Section 7.7.

#### 9.2. City's Right to Perform and Terminate for Cause

- **9.2.1.** If the City provides the CM at Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM at Risk fails to comply in a time frame specified, the City may have a portion of the Work included in the written order accomplished by other sources.
- **9.2.2.** If CM at Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants, Subcontractors, or Suppliers, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- **9.2.3.** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM at Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of CM at Risk's receipt of such notice.
- **9.2.3.1.** If CM at Risk, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CM at Risk of such declaration.
- **9.2.4.** Upon declaring the Agreement terminated pursuant to Subsection 9.2.3.1 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM at Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- **9.2.5.** In the event of such termination, CM at Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM at Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default, but only to the extent that sums remain within the GMP, less any remaining contingencies, following offset of all costs, expenses, and damages sustained or incurred by City as a result of such termination.
- **9.2.6.** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM at Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the reprocurement and defense of claims arising from CM at Risk's default.
- **9.2.7.** If City wrongfully terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

#### 10.0. Insurance Requirements

- **10.0.1** CM at Risk and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the CM at Risk, his agents, representatives, employees or Subcontractors.
- **10.0.2** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- **10.0.3** The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM at Risk from liabilities that might arise out of the performance of the Work under this Agreement by the CM at Risk, his agents, representatives, employees, or subcontractors. CM at Risk is free to purchase such additional insurance as may be determined necessary.
- **10.1 Minimum Scope and Limits of Insurance.** CM at Risk shall provide coverage with limits of liability not less than those stated below:
- **10.1.1** Commercial General Liability Occurrence Form Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate/for this Project	\$6,000,000/\$3,000,000
<ul> <li>Products – Completed Operations Aggregate</li> </ul>	\$3,000,000
Personal and Advertising Injury	\$3,000,000
Each Occurrence	\$3,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Lewisville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM at Risk".

10.1.2Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned<br/>vehicles used in the performance of this Agreement.<br/>Combined Single Limit (CSL)\$3,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Lewisville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM at Risk, including automobiles owned, leased, hired or borrowed by the CM at Risk".

10.1.3	Worker's Compensation and Employers' Liability		
	Workers' Compensation	Statutory	
	Employers' Liability		
	Each Accident	\$100,000	
	Disease - Each Employee	\$100,000	
	Disease – Policy Limit	\$500,000	

The policy shall contain a **waiver of subrogation** against the City of Lewisville.

#### 10.1.4 Builders' Risk Insurance or Installation Floater

In an amount equal to the initial Contract Price plus additional coverage equal to Contract Price for all subsequent Amendments and/or Change Orders.

- 10.1.4.1 The City of Lewisville, the CM at Risk, and Subcontractors, shall be Named Insureds on the policy.
- **10.1.4.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage** for flood and earth movement.
- **10.1.4.3** Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Lewisville, has an insurable interest in the property required to be covered.
- **10.1.4.4** Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.
- **10.1.4.5** Policy must provide coverage from the time any covered property becomes the responsibility of the CM at Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- 10.1.4.6 Policy shall contain a waiver of subrogation against the City of Lewisville.
- **10.1.4.7** CM at Risk is responsible for the payment of all policy deductibles.
- 10.2 **Additional Insurance Requirements.** The policies shall include, or be endorsed to include the following provisions:
- **10.2.1** On insurance policies where the City of Lewisville is named as an additional insured, the City of Lewisville shall be an additional insured to the full limits of liability purchased by the CM at Risk even if those limits of liability are in excess of those required by this Agreement.
- **10.2.2** The CM at Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- **10.2.3** Coverage provided by the CM at Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 10.3 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.
- 10.4 **Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Texas and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM at Risk from potential insurer insolvency.

#### 10.5 Verification of Coverage

- **10.5.1** CM at Risk shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- **10.5.2** All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of

renewal is a material breach of the contract.

- **10.5.3** All certificates required by this Agreement shall be sent directly to City's Senior Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**
- 10.5.4 If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM at Risk must:
  - Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.
- 10.6 **Subcontractors.** CM at Risk's certificate(s) shall include all Subcontractors as additional insureds under its policies **or** CM at Risk shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7 **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

#### **10.8** Bonds and Other Performance Security.

- **10.8.1** Prior to execution of this Agreement, the CM at Risk must provide a performance bond and a payment bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement. In addition to any criteria set forth in this provision, the performance and payment bonds must comply with all requirements of Chapter 2253 of the Texas Government Code.
- **10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Texas, issued by the Director of the Texas Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.
- **10.8.3** The bonds shall be written on forms acceptable to the City of Lewisville and shall name the City as Obligee.
- **10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Texas or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- **10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM at Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- **10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

- 11.1 CM at Risk's General Indemnification.
- 11.1.1 CM at Risk agrees to indemnify and save harmless the City of Lewisville, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the CM at Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM at Risk will be responsible for primary loss investigation, defense, and judgment costs where this contract of indemnity applies. In consideration of the award of this Contract, the CM at Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

#### 12.1 Contract Documents

- **12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) Dated \_\_\_\_\_\_ and used as the basis for the Guaranteed Maximum Price Proposal; GMP, as accepted by the Mayor and Council per Council Minutes of the \_\_\_\_\_day of \_\_\_\_\_, 20 \_\_\_\_, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.
- **12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- **12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- **12.1.3.1** On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.
- **12.1.3.2** Specifications take precedence over Plans.
- **12.1.3.3** In the event of any inconsistency, conflict, or ambiguity between this Contract and the Preconstruction Agreement, this Contract take precedence.
- **12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- **12.1.5** The Contract Documents form the entire agreement between City and CM at Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- **12.2 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- **12.3 Time is of the Essence.** City and CM at Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- **12.4 Mutual Obligations.** City and CM at Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- **12.5 Cooperation and Further Documentation.** The CM at Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- **12.6** Assignment. Neither CM at Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

- **12.7 Successorship.** CM at Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- **12.8** Third Party Beneficiary. Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM at Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM at Risk and not for the benefit of any other party.
- **12.9 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought and tried in the district courts of Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court with the City consenting only to the extent allowed by statute and otherwise reserving all rights and defenses.
- **12.10 Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- **12.11 Compliance with Federal Laws.** CM at Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM at Risk agrees to comply with these laws, as well as any other federal laws that may apply, in performing the Contract Documents and to permit the City to verify such compliance.
- **12.12** Legal Requirements. CM at Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM at Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM at Risk recognizes that portions of the Construction Documents are at variance therewith, the CM at Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- **12.13 Fair Treatment of Workers.** The CM at Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. They shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM at Risk shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.
- **12.14** Independent Contractor. The CM at Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM at Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM at Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- **12.15 Survival.** All warranties, representations, and indemnifications by the CM at Risk shall survive the completion or termination of this Agreement.

**12.16 Covenant Against Contingent Fees**. The CM at Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for

a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Lewisville has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Lewisville shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**12.17 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

#### 12.18 Notice.

**12.18.1** Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested or by e-mail; provided however, that e-mail shall not be a permissible method of delivery for any notice, request, instruction or other document that requires execution by both parties, and shall be deemed given upon (a) confirmation of receipt of a facsimile or e-mail transmission,

(b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM at Risk: <a><br/>
<br/>
<a><br/>
<br/>
<a><br/>
<br/>

to City:

XXXX

With a Copies to:

<mark>XXXXX</mark>

Design Professional: < INSERT>

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

**12.18.2** <u>Notices Related to Payment, Securities-in-lieu, Bonds</u>. Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds, or other instrument securing the performance of this Agreement, including

but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor: <INSERT>

to City:

<mark>XXXX</mark>

With a copy to:

XXXX

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

#### 12.19 Equal Opportunity/Affirmative Action

**12.19.1** The CM at Risk shall comply with the provisions of this Agreement, and the requirements of state, federal, and local law and regulation, pertaining to discrimination and accepting applications or hiring employees. The CM at Risk shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employeed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or

services in connection with this Agreement. The CM at Risk further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM at Risk.

- **12.19.2** The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.
- **12.19.3** The following two paragraphs apply to the CM at Risk named herein and shall appear in all contracts between the CM at Risk and any and all Subcontractors who are employed on this Project. The CM at Risk further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who

may perform any such labor or services in connection with this contract.

"Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

The CM at Risk further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

- 12.20 CM at Risk and Subcontractor Employee Security Inquiries. The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM AT RISK shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.
- 12.20.1 <u>Security Inquiries</u>. CM at Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM at Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute, and unfettered discretion, accept or reject any or all of the employees proposed by CM at Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM at Risk for other work not involving the City of Lewisville. An employee rejected for work under this Agreement shall not be proposed to perform work under other City contracts or engagements without City 's prior approval.
- **12.20.2** Criteria for Evaluating Security Inquiries. Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM at Risk and used by CM at Risk as a factor in making its decision. Prior to such adoption, CM at Risk shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state, and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by City in evaluating its own personnel.
- **12.20.3** Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM at Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM at Risk 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM at Risk performing work (including supervision and oversight) under this Agreement.
- **12.20.4** Terms of This Provision Applicable to all of CM at Risk Contracts and Subcontracts. CM at Risk shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

**12.20.5** <u>Materiality of Security Inquiry Provisions</u>. The Security Inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CM at Risk may, at City's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM at Risk to liability for its breach of contract.

#### 12.21 Hazardous Materials

- **12.21.1** Unless included in the Work, if the CM at Risk encounters onsite material which they reasonably believe to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, they shall immediately stop work and report the condition to the City.
- **12.21.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM at Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM at Risk and the City may agree, in writing, to continue work in non-affected areas onsite.
- **12.21.3** An extension of Contract Time may be granted in accordance with Article 6.
- **12.21.4** The CM at Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- **12.22 Computer Systems** CM at Risk shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free-performance shall include the manipulation of data when dates are in the 20<sup>th</sup> or 21<sup>st</sup> centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.

**12.23 Traffic Control.** CM at Risk will comply with all provisions of the City of Lewisville Traffic Barricade Manual and any other traffic control provisions as may be provided in the technical specifications.

#### CITY OF LEWISVILLE

(INSERT PROJECT NAME) GMP. No. X Project No. XXXXX, Contract No. XXXX

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

The CM at Risk agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), per the terms and conditions of the Agreement.

GMP No. \$	
Owner's Contingency	
Total Contract Price for GMP No. \$	
<mark>(Name),</mark> (Legal Entity)	CITY OF LEWISVILLE
Ву:	Ву:
Title:	Date:
(Corporate Seal)	Recommended:
	By:(Department)
	ATTEST:
ATTEST: (Signature and Title)	
	City Clerk
	APPROVED AS TO FORM:
	City Attorney

Attachments:	EXHIBIT A – PROJECT DESCRIPTION
	EXHIBIT B – APPROVED GMP PROPOSAL
	EXHIBIT C – TECHNICAL SPECIFICATIONS
	EXHIBIT D – CONSTRUCTION DRAWINGS

# **EXHIBIT A - PROJECT DESCRIPTION**

EXHIBIT B – APPROVED GMP PROPOSAL

# EXHIBIT C – TECHNICAL SPECIFICATIONS

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are set forth herein in full OR made part of this agreement by reference OR made part of this agreement as a separate attachment.

# EXHIBIT D – CONSTRUCTION DRAWINGS

Construction Drawings as specified in EXHIBIT B – APPROVED GMP PROPOSAL are made part of this agreement by reference and on file with the:

- Design Professional
- City of Lewisville Project Manager
- CM at Risk Contractor

#### **EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP**

#### GMP submittal, one copy for review.

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Lewisville prior to contract execution.

Table of Contents:

- 1. Scope of Work
- 2. Summary of the GMP
- 3. Schedule of Values summary spreadsheet and backup documents
- 4. List of Plans and Specifications used for GMP Proposal
- 5. List of clarification and assumptions
- 6. Project Schedule
- 1. Scope of work will consist of a brief description of the work to be performed by CM at Risk and major points that the CM at Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
- 2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

All costs should be listed individually for future use.

# PROJECT #: DATE: PROJECT NAME:

GM	GMP Summary			AMOUNT
Α.	Cost of the Work (Labor, Materials, Equipment, Warranty)		\$	
В.	CM at Risk's Contingency		\$	
B.1	TOTAL Cost of Work + CM at Risk Contingency			
			DATE	
	IRECT COSTS RATE		<b></b>	
C.	Construction Fee		%	\$
D.		Seneral Conditions		\$
	D1 Payment and Performance Bond	\$	%	
	D1.1 2-Year Maintenance Bond	\$	%	
	D2 Insurance	\$	%	
E.	Sales Taxes	•	%	\$
		F. TOTA	L GMP	\$
	G. Owner's Contingency		\$	
		H. Contr	act Amount	\$

Formulas:

Total Cost of Work: A+B

Construction Fee: Cost of the Work x Construction Fee % (Converts to Fixed Sum)

General Conditions: The General Conditions Costs are a firm fixed lump sum amount and will include bonds and insurance premiums based on the full contract price for construction. The General Conditions Costs is expressed as a percentage by dividing the General Conditions Costs by the Total Cost of the Work. General Conditions Costs is defined in Article 1. Percentages for General Conditions Costs are calculated by dividing each amount by the Total Cost of the Work (B.1), such as B/B.1, C/B.1,, D1/B.1, and D2/B.1 (Do not acquire bond or insurance until notified by the City of Lewisville Project Manager.)

Total GMP: A+B+C+D+E = F

Note: Role and utilization of Owner's Contingency is outlined in Pre-Construction Contract Article 1 and Article 2.6.4 Note: The scope of the 2-Year Maintenance Bond is to cover 100% of the Cost of Work

- 3. Schedule of Values spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM at Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
- 4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM at Risk, Design Consultant, and Project Manager using the format below.

Plans Used For Preparation of GMP No.	
CM at Risk	Date
Design Consultant	Date
Project Manager	Date

- 5. A list of the clarifications and assumptions made by the CM at Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
- 6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8  $\frac{1}{2}$  x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

#### Final GMP submittal will consist of the following:

- 1. One printed copy of the GMP and one digital copy in searchable PDF format.
- 2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Professional, CM at Risk and City's Designated Project Manager).

For questions regarding the submittal requirements, please contact City's Designated Project Manager.

#### EXHIBIT D - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM at Risk and its Subconsultants follow and are based on the approved proposal submitted to the City.

#### LIST OF CLASSIFICATIONS:

**Classification** 

Direct Labor Rate

Total Labor Rate





## **MEMORANDUM**

- TO: Mayor TJ Gilmore Mayor Pro Tem William Meridith Deputy Mayor Pro Tem Patrick Kelly Councilmember Bob Troyer Councilmember Ronni Cade Councilmember Brandon Jones Councilmember Kristin Green
- **FROM:** Thomas Harris III, City Secretary
- **DATE:** April 1, 2024
- SUBJECT: Consideration of Acceptance of the Resignation of Lori Wilson, Place No. 4, on the Community Development Block Grant Advisory Committee; Declaring a Vacancy Exists for Place No. 4 on the Community Development Block Grant Advisory Committee; and an Appointment to Place No. 4 on the Community Development Block Grant Advisory Committee.

### BACKGROUND

A resignation was received from Lori Wilson, Place No. 4, on the Community Development Block Grant Advisory Committee.

#### ANALYSIS

Six (6) applications have been submitted meeting the qualifications for service in this position including: Allana Akber, Tamela Bowie, Elena Glassman, Gabriel Gonzalez, Breanne Jackson and Terry Ross.

#### **CITY STAFF'S RECOMMENDATION**

That the City Council accept the resignation, declare one vacancy, and consider one appointment to the Community Development Block Grant Advisory Committee as set forth in the caption above.



Thomas Harris <tharris@cityoflewisville.com>

# Fwd: CDBG Advisory Committee Place 4

1 message

Rachel Hiles <rhiles@cityoflewisville.com> Tue, Feb 20, 2024 at 2:19 PM To: Thomas Harris <tharris@cityoflewisville.com>, Jennifer Malone <jmalone@cityoflewisville.com>

Hi Thomas,

Below is the email from Lori Wilson confirming her resignation from the CDBG Advisory Committee. Please let me know what you need from me to move forward with this process!

Thank you,

Rachel Hiles Grants Specialist Neighborhood Services Department 151 W Church Street, Lewisville, TX 75057 Tel: 972.219.5026 rhiles@cityoflewisville.com

Sounds of Lewisville Concert Series | City of Lewisville, TX

------ Forwarded message ------From: Lori Wilson Date: Tue, Feb 20, 2024 at 11:18 AM Subject: Re: CDBG Advisory Committee Place 4 To: Rachel Hiles <rhiles@cityoflewisville.com>

Good morning Rachel, Please accept this email as confirmation of my resignation from the City of Lewisville CDBG Advisory Committee, Place 4. Thank you, Lori Wilson

On Feb 19, 2024, at 3:50 PM, Rachel Hiles <rhiles@cityoflewisville.com> wrote:

Hi Lori,

I reached out to City Secretary to figure out next steps to process your resignation from the CDBG Advisory Committee, and the first thing we'll need is just word of your resignation in writing. It doesn't have to be anything specific, but if you can respond to this email with a confirmation of your resignation from Place 4 on the committee, then that should be enough to get the ball rolling on our end!

Thanks so much,

Rachel Hiles Grants Specialist Neighborhood Services Department 151 W Church Street, Lewisville, TX 75057 Tel: 972.219.5026 rhiles@cityoflewisville.com

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