

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**Headwall Replacement at 1100 Block of Marchant Place and 200 Block of**  
**Ridgeway Circle**

The City of Lewisville, Texas (the “City”), hereby engages Bartlett & West, Inc. (“Consultant”), a Kansas corporation authorized to do business in Texas (the “Consultant”), to perform professional services in connection with the Marchant and Ridgeway Headwall Replacement project (the “Project”).

1. **PROJECT.** The Project is described as follows:

Consultant shall manage the collection of data, design, and project management for the following project: the removal of the upstream and downstream headwalls and wingwalls for two stormwater drainage crossings which have failed and replacement with new headwalls, channel riprap upstream and downstream of the culvert crossing, regrading as needed, and sidewalks from right of way (ROW) to ROW. The first crossing is in the 1100 block of Marchant Place with 2x cast-in-place box culverts with stone riprap upstream and downstream of the culvert crossing. The second crossing is in the 200 block of Ridgeway Circle with 2x reinforced concrete pipe culverts and concrete lined channel upstream and downstream of the culvert crossing.

2. **SCOPE OF SERVICES.** The Consultant shall perform or cause to be performed all services described in this Section 2, as further detailed in Attachment “B.”

**A. Survey and Data Collection Services.** Consultant shall:

- i. Collect topographic survey data including significant, visible improvements & topographic features of a quality to produce one-foot contours; locate visible utilities; set site benchmark and provide benchmark description, if applicable; coordinate Texas811 utility locate requests.
- ii. Site visit to take measurements necessary for retaining wall design.

**B. Design Phase Services.** Consultant shall:

- i. Review any existing plans or data provided by the City and research soil types in area for design.
- ii. Design upstream and downstream headwalls at both locations.
- iii. Develop sidewalk layouts at both locations.
- iv. Develop handrail details for the Ridgeway Circle culvert crossing.
- v. Develop plans for the proposed improvements. Construction drawings will be prepared on 22" x 34" size sheets. The scale shall be as determined to be appropriate. The plan set is anticipated to include:
  - a. Cover Sheet
  - b. General Notes and Quantity Table Sheet
  - c. Typical Sections Sheet. Assumes 1 sheet per location.
  - d. Plan Sheet. Assumes 1 sheet per location with no profile.
  - e. Civil Details Sheet. Assumes 1 sheet.
  - f. Structural Detail Sheet. Assumes 1 sheet.

- vi. Calculate quantities and provide opinion of probable construction cost.
- vii. Perform internal QA/QC review of plans and address comments.
- viii. Prepare Project Bid Manual using the City's standard documents including Bid Form, Project Special Provisions (PSP) and other specifications, as required. The City to provide front end documents and any requirements to be included in the bid manual.
- ix. Submit plans in PDF format to the City for their review. Incorporate City comments and submit final signed/sealed PDF documents to the City for bidding.

**C. Project Management and Coordination. Consultant shall:**

- i. Communicate with the City throughout project including regular progress reports.
- ii. Perform general project administration and invoicing throughout the project.

**D. Bidding Phase Services. Consultant shall:**

- i. Attend prebid meeting with interested Contractors. .
- ii. Assist the City in answering questions from bidders during bidding regarding plans and specifications.
- iii. Develop any necessary addenda per City direction. Assumes 1.
- iv. Assist in Contractor Evaluation.

**E. Construction Phase Services. Consultant shall:**

- i. Attend preconstruction conference conducted by the City with the Contractor.
- ii. Review shop drawings and Contractor product submissions for review in accordance with the Contract Documents.
- iii. Assist the City in answering Contractor questions and Requests for Information (RFIs) during construction.

**F. Additional services. Additional services may be provided for a negotiated fee or on an hourly rate basis, as mutually agreed upon in writing, and are not included as a part of this Agreement. These services may include, but are not limited to:**

- i. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Consultant including, but not limited to, changes in size, complexity, City's schedule, character of construction, or method of financing. These services may also be as a result of changes in laws or regulations after the signing of this Agreement or other causes beyond Consultant's control.
- ii. Providing construction surveys and staking to enable the Contractor to perform its work other than the establishment of baselines and benchmarks.
- iii. Preparing and furnishing record drawings showing appropriate record information based on Project annotated record information furnished by the Contractor.
- iv. Serving as a consultant or witness for the City in any litigation, arbitration, or other dispute resolution process related to the Project.
- v. Other services performed by Consultant not otherwise provided for in this Agreement.

- 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.

- Invoices shall be submitted by cover letter from the project engineer. The letter shall certify that the invoice properly represents work actually done. The Estimated Invoice Breakdown provided in Attachment “B” shall serve as an estimate only, and invoicing shall be based on work completed. 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.

- Professional Services Agreement – Page 3 of 11
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- Rev. 10/5/2023

verification or adaptation by the Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to the Consultant from all claims, damages, losses and expenses including attorneys fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon, in writing, by the City and the Consultant.

7. **OWNERSHIP OF DOCUMENTS.** Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Consultant. The Consultant shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.
8. **THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, TO THE EXTENT THAT SUCH DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE DUTY TO DEFEND SHALL NOT APPLY IN THE CASE OF A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, ITS AGENTS OR EMPLOYEES, OR OTHER ENTITY (EXCLUDING THE CONSULTANT OR ITS AGENT, EMPLOYEE, OR SUBCONSULTANT) OVER WHICH THE CITY EXERCISES CONTROL, IN WHICH INSTANCE THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED BY CONSULTANT IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**
9. **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:   Bartlett & West, Inc.  
                                  Attn: Lee M. Halencak, Practice Builder  
                                  4500 Mercantile Plaza, Suite 301  
                                  Fort Worth, Texas 76137  
  
If to City, to:           City of Lewisville  
                                  Attn: Earl Whitaker, Purchasing Manger  
                                  151 W. Church Street  
                                  Lewisville, Texas 75057
15. **GOVERNING LAW AND VENUE.** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
16. **GOVERNMENTAL IMMUNITY.** Unless otherwise required under the law, the parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.

17. **ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
18. **COMPLIANCE WITH LAWS.** The Consultant shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.
19. **PROTECTION OF RESIDENT WORKERS.** The City actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Consultant shall establish appropriate procedures and controls so no services under the Agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement. The audit will be at the City's expense.
20. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Consultant shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant and its Subcontractors shall at all times during the term of the Agreement with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate the Agreement with the Consultant if the City determines that (a) the Consultant or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Consultant fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Consultant or its Subcontractors fail to timely notify the City of an IRCA violation.
21. **ADA COMPLIANCE.** All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.
22. **SUCCESSORS AND ASSIGNS; ASSIGNMENT.** The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other,

and assignment without such consent shall be void. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

23. **REPRESENTATIONS.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
24. **MISCELLANEOUS DRAFTING PROVISIONS.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
25. **FORCE MAJEURE.** If by reason of Force Majeure, the Consultant shall be rendered unable wholly or in part to carry out its obligations under this Agreement then the Consultant shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Consultant, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean any contingency or cause beyond the reasonable control of the Consultant created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Consultant), fire, explosion or flood, strikes; provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Consultant and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Consultant gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.
26. **DISCLOSURE.** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](https://ethics.state.tx.us), must be filed with the City Secretary of the City no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding their compliance with the requirements of Chapter 176. It is the responsibility of each person or

agent who is contracting or seeking to contract with the City to comply with the filing requirements of Chapter 176.

- 27. PRESERVATION OF CONTRACTING INFORMATION.** In accordance with Section 552.372 of the Texas Government Code, if this Agreement has a stated expenditure of, or will result in the expenditure during the City's fiscal year of, at least one million dollars (\$1,000,000.00) in public funds for the purchase of goods or services by the City, the Consultant shall:
- A.** preserve all contracting information related to this Agreement for the duration of this Agreement;
  - B.** promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Consultant on request of the City; and
  - C.** on completion of this Agreement, either:
    - i. provide at no cost to the City all contracting information related to this Agreement that is in the custody or possession of the Consultant, or
    - ii. preserve the contracting information related to this Agreement as follows:
      - a. construction projects: permanently
      - b. all other projects: four (4) years following completion of the Agreement.

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

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

- 28. TEXAS GOVERNMENT CODE CHAPTER 2252.** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Consultant affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
- 29. TEXAS GOVERNMENT CODE CHAPTER 2271.** Pursuant to Texas Government Code Chapter 2271, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Consultant employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

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

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

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

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

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

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

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



33. **PERFORMANCE:** In compliance with Texas Local Government Code 271.904, the Consultant agrees to perform the services outlined herein with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and to perform the services outlined herein as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.
34. **ENTIRE AGREEMENT.** 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.
35. **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**

**BARTLETT & WEST, INC.**

Approved by the Lewisville City  
Council \_\_\_\_\_

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

By: Lee M Halencak  
Lee M. Halencak, Practice Builder

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

Date: 2/22/2024

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

Attest: [Signature]

**CITY OF LEWISVILLE**

151 West Church Street  
Lewisville, Texas 75057

**APPROVED AS TO FORM:**

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

ATTACHMENT "A" - INSURANCE

HEAD WALL REPLACEMENT – MARCHANT PL. AND RIDGEWAY CR.