

PROFESSIONAL SERVICES AGREEMENT
for
PROJECT CONTROL SERVICES FOR
MULTIGENERATIONAL RECREATION CENTER PROJECT

The City of Lewisville, Texas (the “City”), hereby engages Peak Program Value, LLC (the “Consultant”), to perform professional services in connection with project control services for the construction of the City’s Multigenerational Recreation Center (the “Project”).

PROJECT. The Project is described as follows: Consultant shall provide initial cost management, schedule management, and information management systems set up services and ongoing cost management, schedule management, and information management project control services relating to the construction of the City’s Multigenerational Recreation Center.

I. SCOPE OF SERVICES.

Consultant shall provide the following services for the Project:

- A. One Time Task - Initial Project Controls & Information Management Systems Set Up (Cost Management, Schedule Management, and Information Management Systems):
 - 1. Set up initial systems processes and tools for tracking budgets against commitments; proposed change orders; pending commitments; contract changes; contingency use log(s) and payments vs. budget.
 - 2. Set up buyout savings tracking process with CMAR to validate the use of these funds, and/or their reallocation to Owner’s Contingency for City’s use.
 - 3. Set up the allowances and furnishings/equipment budget tracking system.
 - 4. Review proposed cost and schedule validation tools and processes; project reporting, information management processes; and project documentation approach with City, and adjust as requested.
 - 5. Meet with the team to review project controls and information management approach; train team on mutually agreed upon processes.
- B. Ongoing Project Control Services - Cost, Schedule & Information Management
 - 1. Project Executive will attend one meeting per month; Assistant PM will attend four meetings per month.
 - 2. Review construction project status & interview team members; read weekly meeting minutes & status logs. Report to City monthly on solutions to current project challenges, & mitigating future project risks.
 - 3. Review Applications for Payment monthly for compliance with standards of the industry; compare scheduled/completed work vs. amount billed; appropriateness of contingency reallocations, and proper documentation of expenditures.
 - 4. Track allowances and furnishings/budget status monthly; also confirm buyout savings status monthly, and update budget accordingly.

5. Maintain and update construction project budget tracking system; train City staff on web-enabled access to real-time budget data and contingency status.
6. Publish monthly reports (both executive summary & detailed backup) showing budgets against commitments; proposed change orders; pending commitments; contract changes; contingency use log(s) and payments vs. budget.
7. Work with CMAR to establish weekly schedule tracking log update process, and cross reference delay activities with the master construction project schedule, as well as the submittal tracking system to anticipate impacts.
8. Negotiate duration and allocation of delays to chargeable, concurrent and non-compensable categories; as well as their actual cost impact to the project.
9. Review and validate CMAR's proposed change requests up to 5.0% of the CMAR's current contract value, before Owner's Contingency.
10. Validate project closeout and turnover procedures are followed; and the punchlist is created and addressed per the contract requirements.

The City shall provide or cause to be provided the following for the Project:

- C. Safety and logistics planning and implementation;
- D. Project management team leader;
- E. Quality management, to include:
 1. On-site inspections and oversight of in-progress installations to assure work is proceeding in compliance with the approved construction documents (plans and specifications);
 2. Reviewing and accepting of right-of-way scopes of work; compliance with the ADA codes;
 3. Review subcontractor installations to ensuring product materials and equipment are installed in accordance of local codes; with manufacturer requirements; in the intended location; and to the City's expectations;
 4. Coordinate the extension and termination of franchise utilities and other major City provided utilities to the property and in to the building;
 5. Ensure products selected are installed; assistance with the creation and constant review of Byrne Construction's Expediting Log, review of submitted product data, review of shop drawings, review of samples, and sitting-in on key pre-construction meetings with Byrne Construction and their subcontractors.
 6. Review and evaluate testing reports to ensure measured installations are being delivered to the quality that is specified, and head up coordination with design team if corrective action is required;
 7. Create and provide the team with site observation reports and with open quality item reports;
 8. Coordination of regular quality review walkthroughs by City staff during construction;

9. Communication and coordination of any quality concerns observed by City staff, and assistance in reviewing with and advising on solutions to the team;
- F. Management of facility's staff to tour, utilize, and test the facilities systems for acceptance;
- G. Coordinate the installation of the City-provided furnishings/equipment with the CMAR, from delivery and staging through assembly/trash haul-off and final placement or installation of equipment;
- H. Coordinate the acceptance, delivery, and the occupancy of the facility by the Client;
- I. Coordination of equipment and systems staff training and video recording for future use;
- J. Coordinate and lead the efforts to create a punch list and lead the efforts to document acceptance of corrected punch list items;
- K. Obtain, review, consolidate, and deliver all close-out documents including product data, attic stock, detailed as-built drawings, final lien waivers, bonding documents, final change order, and final payment application; and
- L. Perform 10 or 11-month warranty walk and coordinate any corrections or replacements that are observed and noted, including the review and approval of corrective measures.

II. COMPENSATION.

Lump sum compensation shall be provided upon completion of and submission of an invoice for the one-time services outlined in Section I.A., above, at a cost not to exceed **\$14,150.00**, and certain of the ongoing services as outlined in Section I.B., above, at a cost not to exceed **\$19,670.00**.

Ongoing compensation shall be provided for ongoing services outlined in Section I.B., above, and shall be billed on a monthly basis over a nineteen (19) month period beginning upon the execution of this agreement by both parties, in the amount of **\$9,835.00** per month, not to exceed total compensation of **\$186,865.00**, unless otherwise mutually agreed in writing.

Reimbursable expenses (e.g. mileage, parking, shipping, and out of town travel expenses), which will be billed at cost plus 10% in addition to the above fees. Reimbursable expenses will not exceed **\$17,500.00**.

Total reimbursement for the Project shall not exceed **\$238,185.00**.

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.

- III. INSURANCE.** The Consultant agrees to maintain insurance throughout the term of the contract, 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.
- IV. 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 the City and the Consultant.
- V. 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.
- VI. THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S**

LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

- VII. TIME OF COMPLETION.** The Consultant agrees to start work on the services outlined in Section I, above, for the Project immediately upon the execution of this agreement by both parties, and continue until April 16, 2020, or until the City determines that construction of the Multigenerational Recreation Center is complete, whichever is later. In the event that construction of the Multigenerational Recreation Center is extended beyond April 16, 2020 through no fault of the Consultant, the Consultant's compensation shall be equitably adjusted using the monthly rate for ongoing services outlined in Section II of this agreement, and a reasonable adjustment for Reimbursable Expenses.
- VIII. TERMINATION.** This Agreement may be terminated 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 IV, V and VI above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
- IX. 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.
- X. 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.
- XI. ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
- XII. PROTECTION OF RESIDENT WORKERS.** The City of Lewisville 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 Contract Documents 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 Contract Documents. The audit will be at the

City's expense.

- XIII. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City of Lewisville 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 contract 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 a contract 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.
- XIV. 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.
- XV. SUCCESSORS AND ASSIGNS.** 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 party 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. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.
- XVI. 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 of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville 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 of Lewisville. 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 its 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 of Lewisville to comply with the filing requirements of Chapter 176.

XVII. TEXAS GOVERNMENT CODE CHAPTER 2270. Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (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.

XVIII. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor 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.


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

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

By: _____
Donna Barron, City Manager

Date: _____

Attest: _____
Julie Worster


By: _____
Chris Squadra, Principal

Date: August 29, 2018

Attest: _____

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

ATTACHMENT A
INSURANCE REQUIREMENTS
PROFESSIONAL SERVICES PROJECTS/CONSULTANTS

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. As the Consultant is a Sole Proprietorship it is expressly understood Worker's Compensation insurance is not required by the State of Texas.
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 is expressly understood to not be required for this Consultant.

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

NOTE: The aggregate loss limit applies to each project.

2. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

D. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability Coverages

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

2. Waiver of Subrogation – All coverages

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.

E. ACCEPTABILITY OF INSURERS

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

F. VERIFICATION OF COVERAGE

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

G. HOLD HARMLESS AND INDEMNIFICATION

THE CONSULTANT/CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT/CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.