

# **PROFESSIONAL SERVICES AGREEMENT for CASTLE HILLS FACILITIES AND OPERATIONS ASSESSMENT**

The City of Lewisville, Texas, hereinafter called City, hereby engages HDR Engineering, Inc., hereinafter called Consultant, to perform professional services in connection with the Castle Hills Facilities and Operations Assessment, hereinafter called Project.

## **I. PROJECT. The Project is described as follows:**

The City will annex the remainder of the Castle Hills area in the near future and become their sole provider for water and wastewater services. As part of this process, the City will inherit an existing pump station and three storage tanks as well as a wastewater lift station (currently owned and operated by the Denton County Fresh Water Supply District). Consultant will augment and use the City's recently updated 2018 all-pipes model to conduct additional modeling of the area based on current and projected future water demands. Modeling will be used to assess the future role of the pump station and tanks in meeting water demands in the area. The project includes condition assessment of the pump station and tank facilities, as well as the lift station with recommendations for needed improvements. HDR will also develop an operating strategy that City operations staff can use for fully integrating the Castle Hills area into the drinking water distribution system.

The objectives of the Project are to determine:

- The impact on water age, system pressures, and available fire flow for current and future build-out demands in the Castle Hills area
- The source of treated water supply for the Castle Hills area
- Needed improvements to the existing (current DCFWSD) pump station and tanks considering future, planned operations
- Needed improvements and approximate capacity / capability of the existing lift station
- Operational approach for fully integrating the Castle Hills area into the City's drinking water distribution system

## **II. SCOPE OF SERVICES.**

The scope of services includes the development of an operating strategy for incorporating the Castle Hills area into the City's drinking water distribution system as well as an assessment of pump station, lift station, and storage tank condition and improvement needs. The final report will provide the information needed for the City to budget for facility needs and plan for its approach to future operation of the Castle Hills area of the distribution system. Assumptions include:

- It is assumed that the City will provide pertinent data and information that includes:
- Record drawings, design information (i.e. design report, pump curves) and any GIS information for existing Castle Hills facilities and the Castle Hills area pipe network
- Current and future water demands and future land use maps

- It is assumed the City will install pressure loggers for field testing and provide field support to assist the Consultant with data collection

A. **BASIC SERVICES.** Basic services are delineated by task as follows:

### **Task 1 – Project Administration**

As part of Project planning and set-up, Consultant will develop a project management plan outlining the Project goals and objectives, scope of work, management processes, communications protocols, and quality review plan. A kickoff meeting will be held with the City to discuss key elements of the Project, project plan, and initial technical items. Throughout Project execution, Consultant will conduct monitoring and control activities to track Project progress and develop monthly invoices with Project activity reports for submittal to the City. Activity reports will document activities completed in the previous invoice period and planned activities for the following month.

#### *Deliverables:*

- Project Management Plan
- Meeting #1 - Kickoff Meeting
- Monthly Invoices with Activity Report (including updated Project schedule)

### **Task 2 – Facilities Condition Assessment**

Consultant will review provided data and information regarding the pump station, lift station, and storage tank facilities. Consultant will then conduct a full-day site visit with design discipline leaders (i.e., process-mechanical, structural, architectural, electrical, and instrumentation and controls) to perform a facility condition assessment at the pump station / storage tank site. Consultant will also conduct a full-day site visit with design discipline leaders to perform a facility condition assessment of the lift station. The condition assessments will focus on major equipment and components (i.e. pumps, valves, actuators, structure, tanks) and systems (i.e., sump pump, piping, and valves) as opposed to each maintainable asset. Consultant will document condition of each component with a description, photo, and condition scores as well as approximate capacity of the pump and lift stations. The assessment does not include testing of the facilities or equipment.

#### *Deliverables:*

- Meeting #2 – Condition Assessment Findings
- Tabular Summary of Condition Assessment (with documentation forms for each major component)

### **Task 3 – Existing Demand Review and Future Demand Addition**

Consultant will review existing meter demands as obtained from the City's water meter GIS shapefile and water consumption spreadsheets. The current demands will be allocated in the all-pipe hydraulic model based on the findings and discussion. Consultant will review the City's future build-out land use/development maps, determine future demands, and allocate these demands to the all-pipe hydraulic model.

*Deliverables:*

- Meeting #3 – Existing and Future Demands Review
- PowerPoint Slides

**Task 4 – Pressure Testing**

Consultant will work with the City to install pressure loggers at specific hydrant locations within the Castle Hills area distribution system to collect flow and pressure data to assist in model development and refinement. It is assumed the City will install the pressure loggers and Consultant will spend up to three days in the field recording data with City staff.

*Deliverables:*

- Meeting #4 – Pressure Testing Plan and coordination
- Recommended Test Plan

**Task 5 – Future Scenarios Analysis and CIP Needs Identification**

Consultant will use the all-pipe hydraulic model with the future demands incorporated to evaluate the following operational scenarios:

- System pressure during future maximum day demand (without the elevated tanks supplying water to the system)
- System pressure during future peak hour demand (with the elevated tanks supplying water to the system)
- Available fire flow with 20 psi residual pressure during future maximum day demand

Consultant will identify needs related to future operation of the Castle Hills area facilities (i.e., system connections, need for pressure reduction / augmentation) as well as needs related to existing pump station and tank improvements. CIP projects will be defined with associated planning level costs.

*Deliverables:*

- Meeting #5 – Identified Needs
- Tabular Summary of Identified Needs, Projects, and Costs

**Task 6 – Operating Strategy**

Consultant will develop an operating strategy as a plan for fully integrating the Castle Hills area into the City system-wide operation. This strategy will include recommendations for pumping strategy, tank management (i.e., cycling, operating levels), and valve position / operations.

*Deliverables:*

- Meeting #6 – Review / Discuss Operating Strategy
- Technical Memorandum – Castle Hills Operating Strategy

**Task 7 – Summary Report**

Consultant will prepare a draft report summarizing the results from the evaluations and recommendations with projects and costs. A final report will be prepared after incorporating

review comments received from the City. The Castle Hills Operating Strategy will be attached as an appendix to the report.

***Deliverables:***

- Draft Report
- Project Meeting #7 – Draft Report Review
- Final Report

**B. ADDITIONAL SERVICES.** Additional services not included in this Scope of Work include:

- Water demand forecasting / projections
- Additional modeling beyond that delineated in the scope of basic services
- Modeling of additional scenarios beyond that delineated in the scope of basic services
- Additional evaluations and analysis beyond that delineated in the scope of basic services
- Additional condition assessment beyond that delineated in the scope of basic services including detailed pump testing or other non-destructive / destructive testing
- Development of standard operating procedures beyond recommendations associated with basic services outcomes from system modeling
- Water quality sampling and analysis, bench and pilot scale testing
- Preliminary design or design development of projects
- Detailed design
- Bid phase services
- Construction phase services
- Additional cost estimating beyond that delineated in the scope of basic services
- Additional meetings beyond that delineated in the scope of basic services
- Coordination with regulatory agencies
- Survey, geotechnical or subsurface utility exploration
- Property review / site planning

If needed, these services or other services beyond those described in Basic Services will require separate, written authorization from the City with additional funding.

**III. COMPENSATION.** Consultant will be paid a lump sum amount of \$95,341.00. The fee per task is as follows (refer to Attachment “A” for additional detail):

Task 1 – Project Administration	\$ 6,783.00
Task 2 – Facilities Condition Assessment	\$ 40,862.00
Task 3 – Existing Demand Review and Future Demand Addition	\$ 11,811.00
Task 4 – Pressure Testing	\$ 10,854.00
Task 5 – Future Scenarios Analysis and CIP Needs Identification	\$ 6,909.00
Task 6 – Operating Strategy	\$ 8,908.00
Task 7 – Summary Report	\$ 9,214.00

Invoices shall be submitted by cover letter from the project engineer. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on percentage of work completed per identifiable unit of work. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

- IV. **INSURANCE.** The Consultant agrees to maintain insurance throughout the term of the contract, in accordance with Attachment “B”. 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.
- V. **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.
- VI. **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.
- VII. **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 IS CAUSED BY OR RESULTS FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY AND DEFENSE PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS OR 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. 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, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL) 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.**

- VIII. TIME OF COMPLETION.** A project schedule, shown in Attachment "C" is hereby included in this Professional Services Agreement by reference. The Consultant agrees to perform the services in accordance with the schedule, to the extent over which the Consultant has control.
- IX. 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 V, VI and VII above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
- X. 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 services outlined herein. No term or provision herein or act of the City shall be construed as changing that status.
- XI. 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.

**XII. 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.

**XIII. ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.

**XIV. 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.

**XV. 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.

**XVI. 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.

**XVII. 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.

**XVIII. 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](http://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.

**XIX. 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.

**XX. PERFORMANCE.** In compliance with Texas Local Government Code 271.904, the Contractor 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, under the schedule as referenced in Section VIII of this Agreement.

**XXI. 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, City Secretary

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

**APPROVED AS TO FORM:**

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

By:  \_\_\_\_\_  
Ramon Miguez, P.E., Vice President

Date: 7/18/19

Attest:  \_\_\_\_\_  
Robert W. Hoffman, Vice President

**HDR ENGINEERING, INC.**  
17111 Preston Road, Suite 300  
Dallas, TX 75248-1232

**ATTACHMENT A**  
**City of Lewisville**  
**Castle Hills Facilities and Operations Assessment**

	LABOR HOURS									FEE			
	Principal	PM / Modeling Lead	Technical Advisor / QC	Sr. Engineer	Engineer	GIS	Structural / EI&C	Admin. Support					
	Hoffman	Mahmood	Tomic / Ferland / Cantwell	Townsend	Anguiano	Janik	TBD	Rayshell	Hours	LABOR	EXPENSES	EXPENSES MARKUP AT 10%	TOTAL
Task 1 - Project Administration	4	12			8			12	36	\$ 6,637	\$ 133	\$ 13	\$ 6,783
Task 2 - Facilities Condition Assessment	10		10	40	68		60	12	200	\$ 39,982	\$ 800	\$ 80	\$ 40,862
Task 3 - Existing Demand Review and Future Demand Addition	2	24	1		24	16			67	\$ 11,557	\$ 231	\$ 23	\$ 11,811
Task 4 - Pressure Testing	2	24	1		32				59	\$ 10,621	\$ 212	\$ 21	\$ 10,854
Task 5 - Future Scenarios Analysis / Identify CIP Needs	2	24				8			34	\$ 6,760	\$ 135	\$ 14	\$ 6,909
Task 6 - Operating Strategy	6	16	2	4	8			4	40	\$ 8,717	\$ 174	\$ 17	\$ 8,908
Task 7 - Summary Report	6	12	2	4	16			4	44	\$ 9,016	\$ 180	\$ 18	\$ 9,214
<b>Total</b>	<b>32</b>	<b>112</b>	<b>16</b>	<b>48</b>	<b>156</b>	<b>24</b>	<b>60</b>	<b>32</b>	<b>480</b>	<b>\$ 93,290</b>	<b>\$ 1,865</b>	<b>\$ 186</b>	<b>\$ 95,341</b>

## **ATTACHMENT B**

### **INSURANCE REQUIREMENTS** **ENGINEERING/ARCHITECTURE PROJECTS**

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 and/or Errors and Omissions Insurance.

#### **B. MINIMUM LIMITS OF INSURANCE**

Vendor shall maintain throughout contract limits not less than:

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

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

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

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

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

**D. OTHER INSURANCE PROVISIONS**

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

1. General Liability and Automobile Liability Coverages
  - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.
  - b. The vendor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, and employees, Boards and Commissions or volunteers.
  - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.
2. Waiver of Subrogation – All Coverages except Professional Liability  
Each insurance policy required by this exhibit except Professional Liability shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.
3. Notice of Cancellation - All Coverages  
Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except

after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.

4. Professional Liability (applicable only to certified or licensed Engineers and or Architects)  
“Claims made” policy is acceptable coverage which must be maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City.

#### **E. ACCEPTABILITY OF INSURERS**

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

#### **F. VERIFICATION OF COVERAGE**

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

#### **G. HOLD HARMLESS AND INDEMNIFICATION**

THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT IS CAUSED BY OR RESULTS FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY AND DEFENSE PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS OR 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. 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, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL) OVER WHICH THE CITY EXERCISES CONTROL, IN WHICH INSTANCE THE CITY’S REASONABLE ATTORNEY’S FEES SHALL BE REIMBURSED BY CONSULTANT IN PROPORTION TO THE CONSULTANT’S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

# ATTACHMENT C - SCHEDULE

