



CITY OF WEST LAKE HILLS, TEXAS
NOTICE OF CITY COUNCIL REGULAR MEETING
Wednesday, June 25, 2025 at 7:00 PM

Notice is hereby given that the City Council of the City of West Lake Hills, Texas, will hold a Regular Meeting on the 25th day of June 2025 at 7:00 p.m., in the Council Chambers, Municipal Building, 911 Westlake Drive, West Lake Hills, Texas, at which time the following items will be discussed, to-wit:

REMOTE ACCESS - Join Zoom Meeting at <https://us02web.zoom.us/j/3499549035>
Or via telephone: Dial (346) 248-7799 - Meeting ID: 349 954 9035

If you wish to speak during the meeting or provide written comments, please email your name, phone number, comments, and the item number you wish to speak/comment on to citysec@westlakehills.gov by 1:00 P.M. on June 25, 2025.

1. **Call to Order**
2. **Citizen Communications** The City Council welcomes public comments at this point on any issue. If the issue is listed on the agenda, the speaker may choose to comment during the Public Comment period or when the specific agenda item is taken up by the Council later in the meeting. The Council cannot respond to or discuss matters not listed on the agenda. The Council may provide factual information, refer the item to a staff member, or request the item be added to a future meeting agenda. Speakers shall limit their comments to five (5) minutes each.
3. **Administration** Discuss and consider approval of the June 11, 2025 Regular Meeting Minutes.
4. **Ordinance** Hold a public hearing and consider action on Ordinance 2025-005 amending the code of ordinances regarding public notifications for building and development-related applications.
5. **Administration** Discuss and consider action on approval of a Master Professional Services Agreement for City Engineering Services and On-call Civil Engineering Services with Colliers Engineering & Design, Inc. and Work Orders related to General Engineering, Development Plan Review, and Street Maintenance and authorizing the City Administrator to execute related documents.

6. Administration Discuss and consider action on approval of a Master Professional Services Agreement for Wastewater Engineering Services with HR Green and Work Order Number 1 and authorizing the City Administrator to execute related documents.
7. Administration Discuss and consider action on a Service Level Agreement with UniVista.
8. Administration Discussion and update on bond items regarding Proposition A (new municipal complex) and Proposition B (street and drainage projects).
9. Administration Receive an update and consider possible action regarding City of West Lake Hills v. Jaffe - 1405 Wildcat Hollow.
10. Executive Session In accordance with Texas Government Code, Section 551.001, et seq, the City Council will recess into Executive Session (closed meeting) to discuss the following:
 - a. Section 551.074 - Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee: City Administrator Annual Evaluation.
 - b. Section 551.071 - Consultation with attorney regarding the authority to grant variances.
11. Executive Session Reconvene into Open Session and take action if and as deemed appropriate in the City Councils' discretion regarding deliberation regarding annual evaluation of city administrator and consultation with attorney.
12. Adjournment

Approved by: James Vaughan, Mayor

Certificate

I certify that the above Notice of the June 25, 2025 City Council Regular Meeting was posted on the bulletin board at the Municipal Building, 911 Westlake Drive, West Lake Hills, Texas on Friday, June 20, 2025 by 5:00 pm. and will remain posted continuously until said meeting is convened.

Signed by: Terry Blanchard, City Secretary

The City of West Lake Hills is committed to compliance with the Americans with Disabilities Act. Reasonable accommodation and equal access to communications will be provided upon request.

All items on the agenda are for discussion and/or action. City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 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 551.086 (Economic Development).

CITY OF WEST LAKE HILLS, TEXAS
MINUTES OF A CITY COUNCIL REGULAR MEETING
Wednesday, June 11, 2025 at 7:00 PM

1. Call to Order

With a quorum present, Mayor Vaughan called the meeting to order at 7:02 p.m.

CITY COUNCIL PRESENT:

Mayor James Vaughan
Dana Harmon
Brian Plunkett
Beth South

CITY STAFF PRESENT:

City Administrator Trey Fletcher
City Secretary Terry Blanchard
Finance Director Vonda Ragsdale
Director of BDS Jennifer Bills
Chief of Police Scott Gerdes
City Attorney Charles E. Zech

Meeting was suspended at 7:03 p.m.

Meeting was reconvened at 7:52 p.m.

2. Citizen Communications The City Council welcomes public comments at this point on any issue. If the issue is listed on the agenda, the speaker may choose to comment during the Public Comment period or when the specific agenda item is taken up by the Council later in the meeting. The Council cannot respond to or discuss matters not listed on the agenda. The Council may provide factual information, refer the item to a staff member, or request the item be added to a future meeting agenda. Speakers shall limit their comments to five (5) minutes each.

Mayor Vaughan opened the meeting for public comments. Hearing none, the public comment section was closed.

3. Consent Agenda All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one (1) motion. No separate discussion or action on any of the items is necessary unless requested by a Council Member.
- a. Approval of the May 28, 2025 Regular Meeting Minutes.
 - b. Approval of the June 4, 2025 Workshop Minutes.
 - c. Approval of a Consortium Participation Agreement with Chase Bank for procurement card services and authorization for the City Administrator to execute the same.
 - d. **204 Westhaven Drive** - Approval of Lot 52R, a replat of 1.37 acres of Lot 52 of the Westlake Park Subdivision and 0.09 acres out of lot 32 of the Barton Springs Estates Subdivision, within the city limits (Section 36.01.018 of the West Lake Hills Code).
 - e. **201 Wildcat Hollow** - Approval of 201 Wildcat Minor Plat, being 1.213 acres out of the Wilkinson Sparks Survey Abs No. 21 (Section 36.01.018 of the West Lake Hills Code of Ordinances).

MOTION: Upon a motion made by Councilmember Harmon and a second by Councilmember South, the Council voted three (3) for and none (0) opposed to approve the Consent Agenda as presented. Motion carried.

4. Administration Discuss and consider action on revisions to the Police Department salary matrix.

Chief Gerdes gave a presentation. The following areas were discussed:

- Vacancies and the lack of candidates
- Retention of employees due to the higher demand for officers
- Limited opportunities for advancement
- Increase salaries to be within the average range or higher
- Review of the proposed salary matrix
- To offset the additional expense, the PD will not order any vehicles for the FY25-26
- Moving forward, a maximum of one patrol vehicle may be ordered each fiscal year
- Request to increase the sign-on bonus from \$4,500 to \$6,000 for new hire patrol officers

The Council stated that it is their intention to stay competitive.

MOTION: Upon a motion made by Councilmember Harmon and a second by Councilmember South, the Council voted three (3) for and none (0) opposed to approve the matrix and signing bonus as requested, effective June 21, 2025. Motion carried.

5. Administration Receive an update and consider possible action regarding City of West Lake Hills v. Jaffe - 1405 Wildcat Hollow.

Director Bills gave a summary. The following items were discussed:

- Received final payment last Friday
- Still meeting with architects and engineers
- Due date of June 30, 2025 for final round of comments
- Tree mitigation is being discussed
- Separate easements from neighbors
- Temporary construction access

6. Adjournment

Mayor Vaughan adjourned the meeting at 8:40 p.m.

Respectfully submitted,

JAMES VAUGHAN, MAYOR

ATTEST:

Terry Blanchard, TRMC
City Secretary

These minutes were approved on June 25, 2025.



City of West Lake Hills City Council

AGENDA REPORT

Meeting Date:	June 25, 2025	Item Number:	4
Department:	Building & Development Services		
Prepared By:	Jennifer C. Bills	Cost / Budget:	n/a
Exhibits:	Recommended Changes, Draft Ordinance	Source of Funds:	n/a

Subject

Hold a public hearing and consider action on Ordinance 2025-05 amending the code of ordinances regarding public notifications for building and development related applications.

Recommendation

Staff recommends approval of the changes to the code as drafted.

ZAPCO recommended approval of the ordinance by a vote of 5-0 with the addition of notice for subdivision by placing a sign on property (Attachment 2).

Per the Texas Local Government Code 212.009, cities are required to hold to a strict schedule for ZAPCO and City Council review times. From submittal to the initial ZAPCO meeting, there are less than 30 calendar days. On a resubmittal to clear comments from the City Council (if required), the turnaround is less than 15 days. Staff recommend a sign notice period of 10 days before ZAPCO, and no notice for the resubmittal to clear comments.

One public comment was received during the meeting requesting the notification period be 21 days instead of 15. ZAPCO did not include this in their recommendation.

Discussion

Public notification for various matters is a basic consideration for public involvement and should reflect community expectations. Minimum public notifications are required by State Law and generally address notification method, timing, and content. Cities, including Type A General Law cities can and often do supplement the minimum requirements established by the State. Often, however, this can lead to confusion and extend the development entitlement process resulting in delays and frustration by applicants.

These notifications are required for several processes that include variances, rezoning applications, replats, annexation, appeals, and other development related matters. Throughout the code there are different notification methods, and timelines for different applications. Additionally, most processes require a 30-day notification period, which is twice what the state requires.

Attached is a proposed markup of various sections of the Code of Ordinances that would be amended with the full section for context (Attachment 1). To standardize the process, notices would be sent out a minimum of 15 days before the public hearing and sent to property owners within 300 feet of the subject tract, except for residential replats. Residential replats with a variance require mailed notice before the public hearing, per state

law. If a variance is not required, the notice will be mailed 15 days after the approval. The table below summarizes the type of notice per application type.

Type of Notice	Days	Zoning Change	Variance	SUP	Unified Development	Replat*
Newspaper	15	X				
Website	15	X	X	X	X	
Mailed	15	X	X	X	X	X
Signs	15	X	X	X	X	

The draft ordinance and text (Exhibit A) that will be sent for codification are also attached for review.

Variances in Chapter 22

§ 22.03.511. Procedure and notice.

- (a) The city council, when petitioned for a variance, after ~~fifteen (15)~~ **fifteen (15)** 10 days' written notice to all property owners within ~~300~~ **300** 200 feet of the subject property, shall hold a hearing, and the city council may vary the application of any provision of this article to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of this article or public interest, or when, in its opinion, the interpretation and recommendation of the zoning and planning commission should be modified or reversed.

(Ordinance 372 adopted 9/11/19; Ordinance 2021-004, att. B, adopted 6/23/21)

Unified Development Agreements in Chapter 22

§ 22.03.533. Notice and hearing.

Unified development agreements are subject to the same notice and hearing requirements as provided in this code for variances.

- (1) Uniform development agreement submittal. The current property owners shall submit three (3) copies unified development agreement for approval, along with:
 - (A) A letter.
 - (B) A lienholder consent to the restrictive covenant or an affidavit of no liens.
 - (C) Documentation showing all property owners who would be subject to the restrictive covenant; and
 - (D) A copy of the recorded plat showing the properties to be subject to the restrictive covenant.

The unified development agreement must be signed and acknowledged by the property owners to be subject to the restrictive covenant. A filing fee set by the city council shall be due ~~fifteen (15)~~ **fifteen (15)** ~~fourteen (14)~~ days before the ZAPCO meeting. The commission will deny unified development agreements for which fees have not been paid before the meeting convenes. All documents required for approval must be administratively complete and shall be delivered to the city administrator or administrative secretary for ZAPCO not later than ~~thirty (30)~~ **thirty (30)** ~~fourteenth (14th)~~ days before the next ZAPCO meeting date.

- (2) Duties of ZAPCO. It shall be the duty of ZAPCO to review the unified development agreement before it is submitted before the city council. ZAPCO shall submit its recommendations to the city council.
- (3) Duties of city council. City council shall review the unified development agreement and the submitted recommendations of ZAPCO. After considering the unified development agreement, considering the recommendations of ZAPCO, and holding the public hearing on the matter, city council may approve or disapprove of the unified development agreement.
- (4) Notice of public hearing. Notice of the public hearing is required, and shall be given before the ~~fifteenth (15th)~~ **fifteenth (15th)** day before the date of the hearing by:

- (A) Publication on the city's official website; and
- (B) By written notice, with the unified development agreement attached, forwarded by ZAPCO to the owners of lots subject to the unified development agreement and owners that are within ~~three two~~ **three** hundred (~~300 200~~) feet of the lots to be subject to the unified development agreement, as indicated **in the Travis Central Appraisal District database** ~~on the most recently approved municipal tax roll~~. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the city.

(C) Posting of a sign Section 38.05.002

(Ordinance 361 adopted 3/28/18)

Site Plans in the ETJ – Chapter 28 Planning and General Development

§ 28.03.034. Notice of hearing.

An applicant must provide written notification in accordance with this section if the application is scheduled for a public hearing due to a request for a variance by an applicant. Notice of the **variance** hearing **will follow the process in Section 38.05.036.** ~~must be published on the city's official website no more than thirty (30) nor less than fifteen (15) days before the first hearing for a variance at ZAPCO.~~

(Ordinance 377 adopted 9/11/19)

Replats – Chapter 36 Subdivision

§ 36.01.004. Special provisions.

- (1) **Per Texas Local Government Code, 212.015,** if a proposed replat does not require a variance, the city shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within ~~300 200~~ **300** feet of the lots to be replatted according to the most recent city or county tax roll. Written notice shall be given ~~either by personal service or~~ by depositing a copy of the notice with postage paid in the mail addressed to each owner at the owner's address shown **in the Travis County Appraisal District database.** ~~on the last approved city tax roll or in the case of owners located in the city's extraterritorial jurisdiction, the last approved county tax roll as provided by the Travis County Appraisal District.~~ The notice shall include (A) the zoning designation of the property after the replat; and (B) a telephone number and e-mail address an owner of a lot may use to contact the city about the replat.

(Ordinance 2021-004, att. E, adopted 6/23/21; Ordinance 378 adopted 9/11/19)

Release of easement – Chapter 36 Subdivision

§ 36.01.017. Release of easement.

- (d) Notice of hearing. For any hearing conducted on the release of easement on a residential property, written notice of such hearing shall be given to the owners of all real property located within ~~300 200~~ **300** feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For any hearing on release of easement on a nonresidential property, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all

directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ.

Notice shall be given not less than **fifteen (15)** ~~ten~~ days prior to the date of the hearing before ZAPCO ~~either by personal service or~~ by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown **in the Travis Central Appraisal District database** ~~on the last approved city tax roll~~, with postage paid.

(Ordinance 378 adopted 9/11/19)

Special Use Permit -Chapter 38 Zoning

§ 38.04.032. Special use permit.

(e) Notice of public hearing before board of adjustment.

- (1) The board shall hold a public hearing on each application for a special use permit.
- (2) Written notice of such hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For nonresidential special uses, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. Notice shall be given not less than **fifteen (15)** ~~ten~~ days prior to the date of the hearing ~~either by personal service or~~ by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown **in the Travis Central Appraisal District database** ~~on the last approved city tax roll~~, with postage paid.
- (3) Such notice shall state the purpose, date, time and place of the hearing and shall contain a brief description of the proposed development, including its nature, scope and location. The notice shall also describe any variances the applicant has requested and shall state the location and times at which the applications and supporting documents are available for public inspection. The time and place of the public hearing to be held before the city council shall also be included if known at the time the notice is given and, if it is not known at such time, a telephone number shall be provided where information on the hearing before the city council will be available at a later date.
- (4) City staff shall be responsible for drafting the notice and serving it after it has been approved by the city administrator for form and content.
- (5) **A sign shall be posted per Section 38.05.002.** ~~Notice in the form of weather resistant signs provided by the city shall be posted by the applicant. The sign shall state the purpose, date, time and place of the hearing before the board, and shall contain a brief description of the proposed development. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street. Signs must be posted at least 10 days prior to hearing. All required signs shall remain on the property until final disposition of the matter by the city. The applicant must remove all signs required by this section within 24 hours of final disposition by the city. An affidavit of proof of posting shall be filed by the applicant with the city at or prior to the hearing, accompanied by legible photographs of the sign as posted.~~

(f) Review and approval by board of adjustment.

- (6) The board shall review the application for a special use permit to determine whether the proposed special use complies with each of the general criteria in section 38.04.033 and with each of the specific criteria in section 38.04.034 applicable to the proposed use, and shall make a separate finding thereon for each criterion.
- (7) The board shall not approve an application unless it finds that the proposed special use as presented complies with each of the general and applicable specific criteria.
- (8) The board shall make a written finding of its decision in accordance with section 38.02.007.
- (9) The board may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards or effective time periods designed to ensure compliance with the criteria.
- (10) The board shall not grant a special use permit unless it finds that the proposed special use complies with each of the applicable general and specific criteria; otherwise, it shall deny the application.

(Ordinance 2021-013, att. B, adopted 12/8/21)

§ 38.05.002. Posting of signs on property being considered for special use permit, variance ~~or, zoning change or subdivision approval.~~

The ~~city applicant~~ shall cause one or more ~~weather resistant~~ signs to be erected in conspicuous locations on property for which a special use permit, variance, ~~or zoning change, or subdivision approval~~ has been requested. ~~The sign shall state the purpose, date, time and place of the hearing before the commission. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street.~~ Such signs shall be erected no later than ~~fifteen (15) thirty (30)~~ days before the request is to be considered at a public hearing before the zoning and planning commission or board of adjustment, whichever is earlier, and shall remain until final disposition of the request by the city council. The applicant shall remove all such signs within 24 hours after the council's final decision.

(Ordinance 362 adopted 3/28/18)

Variance – Chapter 38 Zoning

§ 38.05.036. Notice of public hearing before zoning and planning commission.

- (a) The commission shall hold a public hearing on certain applications for a variance.
- (b) Written notice of such hearing shall be given to the owners of all real property located within three hundred (300) feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For nonresidential variances, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. Notice shall be given not less than ~~fifteen (15) thirty (30)~~ days prior to the date of the hearing ~~either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown on in the Travis Central Appraisal District database the last approved city tax roll, with postage paid.~~

- (c) Such notice shall state the purpose, date, time and place of the hearing and shall contain a brief description of the proposed development, including its nature, scope and location. The notice shall also describe any variances the applicant has requested and shall state the location and times at which the applications and supporting documents are available for public inspection. The time and place of the public hearing to be held before the city council shall also be included if known at the time the notice is given and, if it is not known at such time, a telephone number shall be provided where information on the hearing before the board of adjustment will be available at a later date.
 - (d) The **city applicant** shall be responsible for drafting the notice and serving it after it has been approved by the city administrator for form and content. ~~An affidavit of proof of service shall be filed by the applicant with the city administrator at or prior to the hearing.~~
 - (e) **A sign shall be posted per Section 38.05.002.** ~~Notice in the form of a weather resistant sign provided by the city shall be posted by the applicant. The sign shall state the purpose, date, time and place of the hearing before the commission, and shall contain a brief description of the proposed development. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street. Signs must be posted at least thirty (30) days prior to hearing. All required signs shall remain on the property until final disposition of the matter by the city. The applicant must remove all signs required by this section within 24 hours of final disposition by the city. An affidavit of proof of posting shall be filed by the applicant with the city at or prior to the hearing, accompanied by legible photographs of the sign as posted.~~
 - (f) Notice shall not be sent out until a city official (e.g., city inspector or city engineer) has reviewed the submitted and completed application for a variance.
- (Ordinance 362 adopted 3/28/18)

Zoning Change – Chapter 38 Zoning

§ 38.05.094. Report and recommendation from zoning and planning commission.

- (a) Required. No amendment to this chapter shall be enacted without a report and recommendation from the zoning and planning commission.
- (b) Changing a zoning regulation or boundary. Changes to the zoning ordinance, including zoning regulations, restrictions, and boundaries, may from time to time be adopted at the request of a property owner (or the owner's designated agent, tenant, or a prospective buyer), or initiated by the zoning and planning commission, city council, or city staff.
- (c) Public hearing required. The zoning and planning commission shall hold a public hearing on its preliminary report prepared by the city administrator/staff for all zoning changes or general amendments to this chapter proposed.
- (d) Notice of public hearing.
 - (1) Publication. Notice of a public hearing before the commission to consider a proposed zoning classification change or a proposed general amendment to this chapter shall be published **in the official newspaper of the city and** on the city's official website before the **1530**th-day before the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered, **in accordance with Texas Local Government Code Chapter 211.**

- (2) Written notice to property owners. When the public hearing is to consider a proposed zoning district classification change, written notice of such hearing shall be sent to the property owner(s) of the tract which is the subject of the zoning district classification change and to the owners of all real property located within 300 feet of the property on which the change in classification is proposed at least **fifteen (15)** ~~thirty (30)~~ days before the hearing, **in accordance with Texas Local Government Code Chapter 211.**
- (3) **(e) A sign shall be posted per Section 38.05.002.**

Planned Development Rezoning – Chapter 38 Zoning

§ 38.06.129. Public hearing and notice.

- ~~(a) The zoning and planning commission shall hold at least one public hearing on proposed amendments to the PD ordinance.~~
- ~~(b) Notice of the zoning and planning commission hearing shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the 15th day before the date of the public hearing.~~
- ~~(c) Written notice of the public hearing to occur before the zoning and planning commission shall also be sent to all owners of property, as indicated by the most recently approved city tax roll, that is located within the area of application and within three hundred feet (300') of any property affected thereby, said written notice to be sent before the 30th day before the hearing date. Such notice may be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, with first class postage paid, in the United States Mail.~~

(a) Public hearing and notice will follow the same procedure in Section 38.05.094.

(Ordinance 362 adopted 3/28/18)

City of West Lake Hills

MINUTES OF A ZONING & PLANNING COMMISSION (ZAPCO)

REGULAR MEETING

Wednesday, June 18, 2025 at 6:30 PM

1. **Call to Order: Robert Meisel**

- a. Meeting begins at 6:30pm
- b. Roll Call
 - 1. Chair Robert Meisel: Present
 - 2. Vice-Chair Jim Pledger: Present
 - 3. Commissioner Julia Webber: Present
 - 4. Commissioner Karen Bartoletti: Present
 - 5. Commissioner Patrick Stewart: Present
 - 6. Commissioner Laurie Maccini: Present

2. **Citizen Communications:**

- a. Randy Lee – 6 Rocky River Cove
 - 1. Gave update on Mr. Lee and Mayor Vaughn’s experience with the Texas Legislature discussing the city’s authority to enforce tree ordinances

3. **Consent Agenda:** The following items are considered to be self-explanatory by the Commission and will be enacted with one motion. There will be no separate discussion of these items unless a Commission Member or citizen so requests.

- 1. Approval of the April 16, 2025 Zoning and Planning Commission minutes
- 2. Report of previous ZAPCO cases acted upon by the BOA/Council

- a. **Action:** Commissioner Pledger moves for approval of the Consent Agenda
 - i. Commissioner Maccini Seconds
 - ii. Motion carries unanimously 5 - 0

4. **Public Hearing:** Discuss and make recommendations on an ordinance for code amendments regarding public notifications for building and development related applications.

a. **Staff Report:**

- i. Director Bills describes the current and proposed timelines for public notification

b. **Public Comments:**

- i. Randy Lee: 6 Rocky River Cove
 - a. Would prefer 21 days mailed notice
- c. **Discussion:**
 - i. The commission asked why subdivision does not follow same notification process
 - 1. Director Bills explained that the state-required timelines make mailed notification difficult, but that residential replats specifically require mailed notification within 15 days following City Council approval.
- d. **Action:**
 - i. Commissioner Webber moves that the proposed code changes be forwarded to City Council with a recommendation of approval.
 - 1. Commissioner Maccini seconds
 - ii. Commissioner Bartoletti requests to amend the motion to include posted sign notices for subdivision
 - 1. Commissioner Pledger seconds
 - iii. Chair Meisel calls for a vote on the amended recommendation
 - 1. Motion carries unanimously (5-0)

Recommendation will be forwarded to City Council for consideration on June 25, 2025.

5. **Adjournment** - Chair Robert Meisel

- 1. Chair Mesel adjourns the meeting at 7:00pm

APPROVED:

Robert Meisel, Chair

ATTEST:

Joel Sherrouse, Development Coordinator

These minutes were approved on _____, 2025.

ORDINANCE NO. 2025-05

AN ORDINANCE OF THE CITY OF WEST LAKE HILLS, TEXAS AMENDING THE CODE OF ORDINANCES, SECTION 22.03.511 PROCEDURE AND NOTICE, SECTION 22.03.533 NOTICE AND HEARING, SECTION 28.03.034 NOTICE OF HEARING, SECTION 36.01.004 SPECIAL PROVISIONS, SECTION 36.01.017 RELEASE OF EASEMENT, SECTION 38.04.032 SPECIAL USE PERMIT, SECTION 38.05.002 POSTING OF SIGNS ON PROPERTY BEING CONSIDERED FOR SPECIAL USE PERMIT, VARIANCE, ZONING CHANGE OR SUBDIVISION APPROVAL, SECTION 38.05.036 NOTICE OF PUBLIC HEARING BEFORE ZONING AND PLANNING COMMISSION, SECTION 38.05.094 REPORT AND RECOMMENDATION FROM ZONING AND PLANNING COMMISSION, SECTION 38.06.129 PUBLIC HEARING AND NOTICE, PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City Council of the City of West Lake Hills has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City has adopted public notification requirements that meet the minimum requirements of Chapter 211 and 212 of the Texas Local Government Code related to zoning, board of adjustment and subdivision; and

WHEREAS, the City Council finds certain amendments to the aforementioned codes are necessary to standardize the notification timelines and methods; and

WHEREAS, the City Council finds the attached amendments reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST LAKE HILLS, TX:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

That Section 22.03.511 Procedure And Notice, Section 22.03.533 Notice And Hearing, Section 28.03.034 Notice Of Hearing, Section 36.01.004 Special Provisions, Section 36.01.017 Release Of Easement, Section 38.04.032 Special Use Permit, Section 38.05.002 Posting Of Signs On Property Being Considered For Special Use Permit, Variance, Zoning Change Or Subdivision Approval, Section 38.05.036 Notice Of Public Hearing Before Zoning And Planning Commission, Section 38.05.094 Report And Recommendation From Zoning And Planning Commission, Section 38.06.129 Public Hearing and Notice, of the Code of Ordinances of the City of West Lake Hills, Texas is hereby amended to, and after such amendment, shall read in accordance with *Exhibit "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of

said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & APPROVED on this, the 25th day of June 2025.

APPROVED:

by: _____
James Vaughan, Mayor

ATTEST:

Terry Blanchard, City Secretary

APPROVED AS TO FORM:

Charles E. Zech, City Attorney
Denton Navarro Rodriguez Bernal Santee & Zech, P.C.

§ 22.03.511. Procedure and notice.

- (a) The city council, when petitioned for a variance, after ~~fifteen (15)~~ 10 days' written notice to all property owners within ~~300~~ 200 feet of the subject property, shall hold a hearing, and the city council may vary the application of any provision of this article to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of this article or public interest, or when, in its opinion, the interpretation and recommendation of the zoning and planning commission should be modified or reversed.

(Ordinance 372 adopted 9/11/19; Ordinance 2021-004, att. B, adopted 6/23/21)

§ 22.03.533. Notice and hearing.

- (1) Uniform development agreement submittal. The current property owners shall submit three (3) copies unified development agreement for approval, along with:
- (D) recorded plat showing the properties to be subject to the restrictive covenant.
- (E) The unified development agreement must be signed and acknowledged by the property owners to be subject to the restrictive covenant. A filing fee set by the city council shall be due ~~fifteen (15)~~ fourteen (14) days before the ZAPCO meeting. The commission will deny unified development agreements for which fees have not been paid before the meeting convenes. All documents required for approval must be administratively complete and shall be delivered to the city administrator or administrative secretary for ZAPCO not later than ~~thirty (30)~~ ~~fourteenth (14th)~~ days before the next ZAPCO meeting date.
- (4) Notice of public hearing. Notice of the public hearing is required, and shall be given before the ~~fifteenth (15th)~~ day before the date of the hearing by:
- (A) Publication on the city's official website; and
- (B) By written notice, with the unified development agreement attached, forwarded by ZAPCO to the owners of lots subject to the unified development agreement and owners that are within ~~three two~~ hundred (300 200) feet of the lots to be subject to the unified development agreement, as indicated ~~in the Travis Central Appraisal District database on the most recently approved municipal tax roll.~~ The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the city.

(C) Posting of a sign Section 38.05.002

§ 28.03.034. Notice of hearing.

An applicant must provide written notification in accordance with this section if the application is scheduled for a public hearing due to a request for a variance by an applicant. Notice of the ~~variance~~ hearing ~~will follow the process in Section 38.05.036. must be published on the city's official website no more than thirty (30) nor less than fifteen (15) days before the first hearing for a variance at ZAPCO.~~

§ 36.01.004. Special provisions.

(1) ~~Per Texas Local Government Code, 212.015, if~~ a proposed replat does not require a variance, the city shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within ~~300~~ 200 feet of the lots to be replatted according to the most recent city or county tax roll. Written notice shall be given ~~either by personal service or by depositing a copy of the notice with postage paid in the mail addressed to each owner at the owner's address shown in the Travis County Appraisal District database. on the last approved city tax roll or in the case of owners located in the city's extraterritorial jurisdiction, the last approved county tax roll as provided by the Travis County Appraisal District.~~ The notice shall include (A) the zoning designation of the property after the replat; and (B) a telephone number and e-mail address an owner of a lot may use to contact the city about the replat.

§ 36.01.017. Release of easement.

- (d) Notice of hearing. For any hearing conducted on the release of easement on a residential property, written notice of such hearing shall be given to the owners of all real property located within ~~300~~ 200 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For any hearing on release of easement on a nonresidential property, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ.

Notice shall be given not less than ~~ten~~ **fifteen (15)** days prior to the date of the hearing before ZAPCO ~~either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown in the Travis Central Appraisal District database on the last approved city tax roll,~~ with postage paid.

§ 38.04.032. Special use permit.

- (e) Notice of public hearing before board of adjustment.
- (2) Written notice of such hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For nonresidential special uses, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. Notice shall be given not less than ~~ten~~ **fifteen (15)** days prior to the date of the hearing ~~either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown in the Travis Central Appraisal District database on the last approved city tax roll,~~ with postage paid.
- (5) ~~A sign shall be posted per Section 38.05.002. Notice in the form of weather resistant signs provided by the city shall be posted by the applicant. The sign shall state the purpose, date, time and place of the hearing before the board, and shall contain a brief description of the proposed development. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street. Signs must be posted at least 10 days prior to hearing.~~

~~All required signs shall remain on the property until final disposition of the matter by the city. The applicant must remove all signs required by this section within 24 hours of final disposition by the city. An affidavit of proof of posting shall be filed by the applicant with the city at or prior to the hearing, accompanied by legible photographs of the sign as posted.~~

§ 38.05.002. Posting of signs on property being considered for special use permit, variance ~~or, zoning change or subdivision approval.~~

The ~~city~~ applicant shall cause one or more ~~weather resistant~~ signs to be erected in conspicuous locations on property for which a special use permit, variance, ~~or zoning change, or subdivision approval has been requested.~~ ~~The sign shall state the purpose, date, time and place of the hearing before the commission. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street.~~ Such signs shall be erected no later than ~~fifteen (15) thirty (30)~~ days before the request is to be considered at a public hearing before the zoning and planning commission or board of adjustment, whichever is earlier, and shall remain until final disposition of the request by the city council. The applicant shall remove all such signs within 24 hours after the council's final decision.

§ 38.05.036. Notice of public hearing before zoning and planning commission.

- (b) Written notice of such hearing shall be given to the owners of all real property located within three hundred (300) feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For nonresidential variances, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. Notice shall be given not less than ~~fifteen (15) thirty (30)~~ days prior to the date of the hearing ~~either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown on in the Travis Central Appraisal District database the last approved city tax roll, with postage paid.~~
- (d) The ~~city~~ applicant shall be responsible for drafting the notice and serving it after it has been approved by the city administrator for form and content. ~~An affidavit of proof of service shall be filed by the applicant with the city administrator at or prior to the hearing.~~
- (e) ~~A sign shall be posted per Section 38.05.002. Notice in the form of a weather resistant sign provided by the city shall be posted by the applicant. The sign shall state the purpose, date, time and place of the hearing before the commission, and shall contain a brief description of the proposed development. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street. Signs must be posted at least thirty (30) days prior to hearing. All required signs shall remain on the property until final disposition of the matter by the city. The applicant must remove all signs required by this section within 24 hours of final disposition by the city. An affidavit of proof of posting shall be filed by the applicant with the city at or prior to the hearing, accompanied by legible photographs of the sign as posted.~~

§ 38.05.094. Report and recommendation from zoning and planning commission.

(d) Notice of public hearing.

- (1) Publication. Notice of a public hearing before the commission to consider a proposed zoning classification change or a proposed general amendment to this chapter shall be published **in the official newspaper of the city and** on the city's official website before the **1530**th-day before the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered, **in accordance with Texas Local Government Code Chapter 211.**
- (2) Written notice to property owners. When the public hearing is to consider a proposed zoning district classification change, written notice of such hearing shall be sent to the property owner(s) of the tract which is the subject of the zoning district classification change and to the owners of all real property located within 300 feet of the property on which the change in classification is proposed at least **fifteen (15) thirty (30)** days before the hearing, **in accordance with Texas Local Government Code Chapter 211.**
- (3) **(e) A sign shall be posted per Section 38.05.002.**

§ 38.06.129. Public hearing and notice.

- ~~(a) The zoning and planning commission shall hold at least one public hearing on proposed amendments to the PD ordinance.~~
- ~~(b) Notice of the zoning and planning commission hearing shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the 15th day before the date of the public hearing.~~
- ~~(c) Written notice of the public hearing to occur before the zoning and planning commission shall also be sent to all owners of property, as indicated by the most recently approved city tax roll, that is located within the area of application and within three hundred feet (300') of any property affected thereby, said written notice to be sent before the 30th day before the hearing date. Such notice may be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, with first class postage paid, in the United States Mail.~~

- (a) Public hearing and notice will follow the same procedure in Section 38.05.094.**



City of West Lake Hills City Council

AGENDA REPORT

Meeting Date:	<u>June 25, 2025</u>	Item Number:	<u>5</u>
Department:	<u>Administration</u>		
Prepared By:	<u>Trey Fletcher</u>	Cost / Budget:	<u>\$393,000</u>
Exhibits:	<u>Master Services Agreement</u>	Source of Funds:	<u>General Fund</u>

Subject

Discuss and consider action on approval of a Master Professional Services Agreement for City Engineering Services and On-call Civil Engineering Services with Colliers Engineering & Design, Inc. and Work Orders related to General Engineering, Development Plan Review and Street Maintenance and authorizing the City Administrator to execute related documents.

Recommendation

Approval.

Discussion

City Engineering services have historically been provided by a consultant and a critical role in the operation of the city. A request for qualifications was issued in February 2025. City Council approved the selection of Colliers on April 9.

This item is to request approval of a Master Services Agreement and approve three Work Orders. Through this mechanism, various projects will be undertaken over time. Initially, staff and consultants identified the following work orders and annual costs:

- General Engineering Services, \$125,000
- Development Plan Review Services, \$150,000
- Street Maintenance, \$100,000

Administrative Authorization:

- MS4 Program Support, \$14,000
- Drainage Manual Review, \$4000

Work order proposals of \$50,000 or more will be subject to approval by the City Council. Proposals for less than \$50,000 are subject to approval by the City Administrator. Such approvals or amendments will be reported to the City Council.



City of West Lake Hills
911 Westlake Drive
West Lake Hills, Texas 78746

**STANDARD FORM OF AGREEMENT
MASTER PROFESSIONAL SERVICES**

**CITY ENGINEERING SERVICES
AND
ON-CALL CIVIL ENGINEERING SERVICES**

MASTER PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____
RFQ Issued February 14, 2025

This MASTER PROFESSIONAL SERVICES AGREEMENT ("Agreement") is between the **City of West Lake Hills**, a Texas Type A general law municipal corporation, (the "City") and Colliers Engineering & Design, Inc., a New Jersey corporation _____ (the "Consultant"). City and Consultant are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH

WHEREAS, City desires Consultant to provide on-call professional engineer services for various civil projects in the City ("Services") as described in the RFQ issued February 14, 2025; and

WHEREAS, City desires to engage Consultant to perform the Services; and

WHEREAS, Consultant represents that it is qualified and desires to perform such Services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1 Consultant agrees to perform Services related to _____ as are requested from time to time by City, which Services shall be set forth more particularly in Work Orders, the form of which is attached hereto as **Attachment B**, issued from time to time by City and accepted by Consultant. Each Work Order shall constitute a separate and independent agreement between Consultant and City.

1.2 Work Orders shall contain the schedule, price, and payment terms applicable to the Services within the scope of such orders. Time is of the essence to this Agreement and all Work Orders. Work Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of Consultant, returned to City and countersigned by City. The specific terms of a Work Order may not be modified unless such modifications are agreed to in writing by City and Consultant. The Consultant shall review the Work Order, prepare a cost estimate to complete the Scope of Work, agree to an estimated schedule for performance, and return the Work Order for City's authorization. City Administrator may also issue oral Work Orders to which Consultant will respond with a written proposal. Upon receipt of City's written acceptance. The Consultant shall commence the Work as detailed on the Work Order.

1.3 All Work Orders incorporate and shall be governed by and subject to the terms, conditions, and other provisions of this Agreement; provided, however, that a Work Order may specifically state a term, condition, or other provision of this Agreement that is being modified

thereby. Unless so stated, the terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated into a Work Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the balance of the terms, conditions, and other provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate City to issue, or Consultant to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of them, from entering into agreements other than this Agreement for professional services or other work.

1.5 Consultant agrees to execute any and all certificates and/or documents as may reasonably be required by City, provided same is not in conflict with this Contract, unless excepted by Consultant in writing.

1.6 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, oversee Consultant's Services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Agreement. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement. Consultant shall designate a full-time employee contact for each Work Order to act as the project Administrator (the "Consultant Project Administrator") issued by and under this Agreement for consultation throughout the Work Order. Any replacement of that Consultant Project Administrator shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

1.7 Consultant shall be responsible for the coordination of its Services with those of its Subconsultant, the City, and the City's Consultants. Consultant shall be responsible for the completeness and accuracy of all Work Product submitted by or through Consultant and for its compliance with all applicable local, state and federal rules, regulations, ordinances and codes, life safety codes, building codes, zoning codes, and accessibility requirements and codes, including, but not limited to the provisions of the Americans with Disabilities Act, the *Texas Accessibility Standards of the Architectural Barriers Act* located at Chapter 469 of the Texas Government Code, the Federal Fair Housing Amendment Act, and all other regulatory requirements, laws, standards, codes and statutes related to the Services. Upon receipt from the City, the Consultant shall review any services or information furnished by the City and the City's Consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

ARTICLE 2. TERM OF AGREEMENT

2.1 This Agreement shall be effective from the date first set forth above and shall continue without action by either Party for a term of three (3) years from the date first set forth above or through completion of the Work for all approved Work Order(s) unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing Paragraph 2.1, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as Consultant's obligations in connection with the Services under such Work Orders have been completed and fulfilled; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Work Order for cause and City shall have the right to terminate any Work Order for convenience.

2.3 Without limiting the generality of the foregoing Paragraph 2.2, Consultant's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration of termination of this Agreement or any Work Order.

ARTICLE 3. COMPENSATION AND PAYMENT

3.1 City agrees to pay Consultant, and Consultant agrees to accept, as full and complete compensation for Services properly performed by Consultant in accordance with this Agreement and applicable Work Order, the rates and charges agreed upon for a specific Work Order. Paragraphs A.1 or A.2 of **Attachment A**, which is attached hereto and incorporated herein by reference, shall be used to negotiate the compensation payable for each Work Order issued hereunder.

3.2 On or before the tenth day of each calendar month, Consultant shall submit an invoice to City, together with backup documentation required by City and releases and waivers in forms acceptable to City, covering all Services performed under any Work Order by Consultant and its subconsultants, subcontractors and suppliers during the preceding calendar month. Consultant shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested pursuant to each such Work Order, (iv) the amount previously paid pursuant to each such Work Order, (v) descriptions of Services performed during the prior month pursuant to each such Work Order, and (vi) the total payment requested by such invoice. Pursuant to The Texas Prompt Pay Act (Texas Government Code 2251.021) payments terms are NET thirty (30) days from date of invoice. If City objects to all or any portion of an invoice, it will notify Consultant of the same within twenty-one (21) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the Parties shall make every effort to settle the disputed portion of the invoice. Interests and Consultant's right to suspend performance will be governed by Texas Prompt Pay Act.

3.3 City shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect City from loss or expected loss because of:

- (a) services that are not in compliance with this Agreement or the applicable Work Order or any failure of Consultant to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;
- (b) third party suits, stop notices, claims or liens arising out of Services performed for which Consultant is responsible pursuant to this Agreement and asserted or filed against City or any of its property or portion thereof or improvements thereon provided that Consultant fails to provide City with sufficient evidence that Consultant's insurance is adequate or shall cover the claim(s);
- (c) uninsured damage to any Indemnitee (hereinafter defined) which results from Consultant's failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by Consultant or any of its subcontractors, subconsultants, or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or
- (d) any failure of Consultant to pay any subcontractor, subconsultant, or supplier of Consultant the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. Consultant will not include in its billings to City any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

Any failure by City to exercise its right to withhold all or any part of payment requested in any invoice as provided in this Paragraph 3.3 shall not be and shall not be construed as (i) a waiver of City's right to do so in the future, or (ii) evidence that any of the circumstances identified in Subparagraphs 3.3(a) through (d) above have not occurred.

3.4 Consultant agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from City, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by Consultant out of such payment made to Consultant by City. Provided that City is not in breach of its payment obligations hereunder, Consultant shall ensure that the Project site remains free from all liens and claims by its consultants. If City receives notice of a lien claim, or a claim for non-payment, from any of Subconsultants, City may, in its sole discretion, directly pay any such Subconsultant. If City pays the Subconsultant, the amount paid for the claim and any expenses, including reasonable attorneys' fees, incurred by City shall be deducted from Consultant's next payment. Further, provided that City has paid Consultant in accordance with the terms of this Agreement and any particular Work Order, CONSULTANT SHALL DEFEND AND INDEMNIFY CITY FROM AND AGAINST ANY CLAIMS FOR PAYMENT ASSERTED OR FILED BY ANY SUCH PERSON OR ENTITY AGAINST CITY, ITS PROJECT OR PROPERTY OR CONSULTANT.

**ARTICLE 4. STANDARD OF CARE; COORDINATION OF SERVICES;
SAFETY; COST ESTIMATES; LEGAL COMPLIANCE; THIRD PARTY REVIEW**

4.1 Pursuant to Texas Local Government Code § 271.904(d), Consultant shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineers (collectively, the Consultant's "Standard of Care").

4.2 Consistent with its Standard of Care, Consultant shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep City apprised of the status of Services, coordinate its activities with City, and accommodate other activities of City at sites that Services impact. Consultant shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 Consultant shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while performing Services. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons. Provided however, that to the extent such Work Order or Services are to be performed for or on an active construction project, construction contractors of City shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all persons, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with City. Without assuming any control over, responsibility for or liability whatsoever with respect to the construction contractor obligations of the foregoing sentence, Consultant shall notify City if it observes violations of safety regulations or ordinances or quality of work deficiencies by City's construction contractors to the extent Consultant becomes actually aware of same or Consultant should have known if practicing Consultant's Standard of Care. Consultant shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that Consultant provides to City any estimate of costs associated with construction, any such estimate shall be developed in accordance with Consultant's Standard of Care, but it is recognized by the Parties that neither Consultant nor City has control over the cost of the labor, materials, or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary

from City's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by Consultant.

4.5 Consultant hereby agrees that the following terms, conditions, verifications, certifications, and representations apply to and are incorporated into this Agreement for all purposes:

- (a) With respect to providing Services hereunder, Consultant shall comply with any applicable Equal Employment Opportunity and/or Affirmative Action ordinances, rules, or regulations during the term of this Agreement.
- (b) Pursuant to Texas Local Government Code Chapter 176, Consultant shall submit a signed Texas Ethics Commission ("TEC") Conflict of Interest Questionnaire ("CIQ") at the time Consultant submits this signed Agreement to City. TEC Form CIQ and information related to same may be obtained from TEC website by visiting <https://www.ethics.state.tx.us/forms/conflict/>. If Consultant certifies that there are no Conflicts of Interest, Consultant shall indicate so by writing name of Consultant's firm and "No Conflicts" on the TEC Form CIQ.
- (c) If Consultant is a privately held entity, then pursuant to Texas Government Code Section 2252.908 and the rules promulgated thereunder by the TEC, Consultant shall submit a completed and signed TEC Form 1295 with a certificate number assigned by the TEC to City at the time Consultant submits this signed Agreement to City. TEC Form 1295 and information related to same may be obtained from TEC website by visiting <https://www.ethics.state.tx.us/filinginfo/1295/>. Consultant agrees and acknowledges that this Agreement shall be of no force and effect unless and until Consultant has submitted said form to City, if and to the extent such form is required under Government Code § 2252.908 and the rules promulgated thereunder by the TEC.
- (d) As required by Chapter 2271, Texas Government Code, Consultant hereby verifies that Consultant, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott Israel and will not boycott Israel through the term of this Agreement. The term "boycott Israel" in this paragraph has the meaning assigned to such term in Section 808.001 of the Texas Government Code, as amended.
- (e) Pursuant to Chapter 2252, Texas Government Code, Consultant represents and certifies that, at the time of execution of this Agreement, neither Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is engaged in business with Iran, Sudan, or any terrorist organization, and is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.
- (f) As required by Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, Consultant hereby verifies that Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott energy companies, and will not boycott energy companies during the term of this

Agreement. The term “boycott energy companies” in this paragraph shall have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code, as amended.

- (g) As required by Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, “SB 19”), as amended, Consultant hereby verifies that Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The term “discriminate against a firearm entity or trade association” in this paragraph shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19), as amended.
- (h) Pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature, Regular Session), as amended, and to the extent this Agreement grants to Consultant direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, Consultant verifies that neither Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, nor any of its sub-contractors are: (i) owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) 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; or (ii) headquartered in China, Iran, North Korea, Russia or a designated country. The term “designated country” in this paragraph means a country designated by the Governor as a threat to critical infrastructure under Section 2274.0103, Texas Government Code. The term “critical infrastructure” in this paragraph shall have the meaning assigned to such term in Section 2274.0101, Texas Government Code.

4.6 Consultant acknowledges and agrees that projects of City may be subject to review and approval by other third parties. Accordingly, as and when requested by City, Consultant shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 Consultant does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If City reuses any Work Product without Consultant’s specific written verification or adaptation, such reuse will be at the risk of City, without liability to Consultant.

4.8 Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City’s approval be deemed to be the assumption of responsibility by the

City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

4.9 Conflicts of Interest Prohibited. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement or any Work Order. If Consultant maintains or acquires a conflicting interest, any contract or Work Order with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City. The Consultant shall take appropriate steps to ensure that neither the Consultant nor any Staff is placed in a position where, in the reasonable opinion of the City, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the City under the provisions of the Agreement. The Consultant will disclose to the Authority full particulars of any such conflict of interest which may arise. By means of example only, and not limitation, it shall be a potential conflict of interest if Consultant provides plan review services on any land development, where Consultant has been involved in the preparation of the current or prior plan proposed to be developed in the City to ensure that such conform to codes adopted by the City; or has been involved in the preparation of a plan adjacent or abutting a development for which the City has requested Plan Review Services.

- (a) Notice of Potential Conflict. Consultant shall notify City in writing prior to accepting any Work Order, or beginning Services on any assignment or task under a Work Order for which Consultant believes there is or may be an actual or potential conflict of interest due to Engineer's professional services to third parties. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the City in writing of such conflict. The Consultant shall not receive any compensation, and Consultant waives the same, in connection with any work, Services or other activities of the Consultant for Service provided where a conflict of interest exists, unless notice is provided as required herein. As used herein a conflict of interest.
- (b) Termination for Material Conflict. If, in the reasonable judgment of the City after receiving notice required in 4.9.1 or otherwise, such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the City may terminate the Agreement for convenience immediately upon written notice to Consultant; such termination of the Agreement or any Worker shall be effective upon the receipt of such notice by Consultant.

4.10 Minimize Interruption. It should be understood that City's wastewater collection and Water Control Improvement District 10's (the "District") water distribution systems must function during the Agreement period with a minimum of inconvenience to City or the District and its customers. Requirements of the Texas Commission on Environmental Quality (TCEQ) and the State and federal regulatory agencies having jurisdiction over the Project site, must be met by Consultant. It is therefore incumbent on Consultant to plan ahead in design and Services on the basis of integrating any demolition, installation, construction and implementation program as far as possible into the normal operating sequence of the various utility systems to avoid or

minimalize disruption of services. No departure from the normal operating sequence of the utility systems will be allowed, except with the specific advanced written agreement of City, District, and Consultant's design specifications and drawings should include provisions requiring the same.

ARTICLE 5. COST RECORDS

5.1 Consultant shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by Consultant under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, Consultant shall maintain records of direct costs for which City is charged. City shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. City's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third-party charges only. Except to the extent audit rights are granted to City by applicable law, City shall have no audit rights with respect to the portion of Work Orders or Services compensated on a lump sum basis.

ARTICLE 6. OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, deliverables, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by Consultant, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of City are and shall remain City's property upon creation (collectively, "Work Product"); provided, however, that Work Product shall not include pre-existing proprietary information of Consultant, its subconsultants, subcontractors, and/or suppliers ("Consultant Proprietary Information"). To this end, Consultant agrees to and does hereby assign, grant, transfer, and convey to City, its successors and assigns, Consultant's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. Consultant confirms that City and its successors and assigns shall own Consultant's right, title and interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, Consultant hereby grants City a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties Consultant Proprietary Information in connection with City's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of City or otherwise in connection with property or projects in which City has an interest (whether by City or a third party). Consultant shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its subconsultants, subcontractors, and suppliers. Work Product is to be used by Consultant only with respect to the Project in connection with which such Work Product was created and is not to be used on any other project. Consultant and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-

transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of City's copyright or other reserved rights. Consultant agrees that all Work Product will be maintained according to the provisions of the Public Information Act, Chapter 552, Texas Government Code, and the Local Government Records Act, Chapters 201 through 205, Texas Local Government Code, each as amended. Consultant shall deliver all copies of the Work Product to City upon the earliest to occur of City's request, completion of Services in connection with which Work Product was created, or termination of this Agreement. Consultant is entitled to retain copies of Work Product for its permanent Project records.

6.2 Consultant agrees that all information provided by City in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used, or disclosed by Consultant without the prior written consent of City, except as may be necessary for Consultant to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (a) was at the time of receipt by Consultant otherwise known by Consultant by proper means;
- (b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to Consultant;
- (c) subsequently is developed independently by Consultant, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of Consultant's being a Party to this Agreement;
- (d) becomes known or available to Consultant from a source other than City and without breach of this Agreement by Consultant or any other impropriety of Consultant;
- (e) enters the public domain without breach of the Agreement by or other impropriety of Consultant;
- (f) becomes available to Consultant by inspection or analysis of products available in the market;
- (g) is disclosed with the prior written approval of City;
- (h) with the exception of trade secrets, was exchanged between City and Consultant and ten (10) years have subsequently elapsed since such exchange; or
- (i) is disclosed to comply with the Texas Public Information Act ("TPIA") or in response to a court order to comply with the requirement of a government agency.

6.3 Consultant shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as Consultant normally takes to preserve and safeguard its own proprietary or confidential information.

6.4 Consultant will advise City of any patents or proprietary rights and any royalties, licenses, or other charges which Consultant knows or should know in the exercise of its Standard of Care impacts any design provided by Consultant in connection with any Services and obtain City's prior written approval before proceeding with such Services. Consultant shall not perform patent searches or evaluation of claims, but will assist City in this regard if requested, pursuant to a written change order in accordance with Paragraph 12.1, below. There will be no charge for Consultant's existing patents.

6.5 Public Records. Notwithstanding any provisions of the Agreement to the contrary, Consultant understands that the City will comply with the Texas Public Information Act, Tex. Gov't. Code Ann. § 552.001 et seq., as amended. If contacted by the City, Consultant will cooperate with the City in the production of records responsive to the request. Consultant agrees to provide the records responsive to the request in the format and within the time frame specified by the City. Consultant may request that City seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by the City in its sole discretion to comply with the legal requirements of the TPIA. Additionally, Consultant will notify the City's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with the Agreement and/or any amendment to the Agreement. The Agreement and/or any amendment to the Agreement and all data and other information generated or otherwise obtained in its performance is subject to the TPIA. Consultant agrees to maintain the confidentiality of information received from the City during the performance of the Agreement, including information that contains personal identifying information and/or sensitive personal information as defined by the Texas Identity Theft Protection Act, Chapter 521, Texas Business and Commerce Code. Furthermore, Consultant is required to make any information created or exchanged with the State pursuant to the Agreement, and not otherwise excepted from disclosure under the TPIA, available in a format that is accessible by the public, as specified by the City, at no additional charge to the City. Notwithstanding the foregoing, City acknowledges that one or more of Consultant's affiliates is a registered investment adviser and that Consultant may be subject to routine examinations, investigations, regulatory sweeps or other regulatory inquiries by applicable regulatory and self-regulatory authorities. City agrees that Consultant may make such disclosures as may be requested by any such authority (or examiner thereof) and will not be required to comply with the process described in this paragraph; provided that if the request by such authority (or examiner thereof) is specifically targeted at City, Consultant will notify City (to the extent not prohibited by such authority or examiner or by applicable rule, regulation or law) as promptly as practicable following such request. City acknowledges that Consultant's review of the Confidential Information will inevitably enhance Consultant's knowledge and understanding of City's business in a way that cannot be separated from Consultant's other knowledge, and City agrees that this Agreement shall not restrict Consultant in connection with the purchase, sale, consideration of, and decisions related to other investments.

ARTICLE 7. INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, Consultant shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. Consultant shall not be considered a partner, affiliate, agent, or employee of City and shall in no way have any authority to bind City to any obligation.

ARTICLE 8. WARRANTY PERIOD; GUARANTEES

8.1 If within a period of one (1) year following completion of Services under a Work Order, it is discovered that such Services were not performed in accordance with Consultant's Standard of Care, City, in its sole discretion, may: (1) direct Consultant to re-perform and Consultant shall re-perform such Services at its own expense, and as expediently or in the manner required for City's needs; or (2) retain such other consultant or consultants as necessary to perform such corrective services, and Consultant agrees to pay City's costs associated with having such other consultant or consultants perform such corrective services, and any other damages incurred by City as a result of such default. The obligations of Consultant under this Paragraph 8.1 are in addition to other rights and remedies of City available to it pursuant to this Agreement or applicable law.

8.2 Consultant agrees to assign City the warranty or guarantee of any subconsultant, subcontractor, supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by Consultant hereunder and cooperate and assist City in City's enforcement thereof. Consultant's responsibility with respect thereto is limited to such assignment, cooperation, and assistance. The representations and warranties of Consultant under this Agreement and Work Orders are made in lieu of any other warranties or guarantees and Consultant makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and Consultant shall have no liability to City based upon any theory of liability that any such other warranty was made or breached.

ARTICLE 9. INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY AND EACH OF ITS COUNCIL MEMBERS, OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "CITY INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST ALL THIRD PARTY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS INCURRED BY INDEMNITEES THAT ARISE FROM OR RELATE TO PERFORMANCE OF THE SERVICES OR THIS AGREEMENT TO THE EXTENT:

- (a) DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT WITH**

- CONSULTANT OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;
- (b) CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF CONSULTANT'S STANDARD OF CARE, BY CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT WITH CONSULTANT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;
 - (c) CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING ACTUAL OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;
 - (d) DUE TO THE FAILURE OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT WITH CONSULTANT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL TO PAY ITS CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR
 - (e) OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LIABILITIES, LOSSES, COSTS, OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF THIRD-PARTY TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL.

NOTHING CONTAINED IN THIS SECTION 9.1 SHOULD BE CONSTRUED TO REQUIRE CONSULTANT TO INDEMNIFY OR HOLD HARMLESS CITY OR ANY INDEMNITEES FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY OR INDEMNITEES SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B)). NOTHING IN THIS ARTICLE 9 IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS REQUIRED UNDER ARTICLE 11 HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, CONSULTANT SHALL, UPON FINAL ADJUDICATION OF THE LOSSES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEYS' FEES INCURRED TO DEFEND

AGAINST THE LOSSES IN PROPORTION TO CONSULTANT'S LIABILITY TO ANY THIRD PARTY FOR SUCH LOSSES.

9.3 Consultant shall procure liability insurance covering its obligations under this section.

9.4 It is mutually understood and agreed that the indemnification provided for in this section 9 shall indefinitely survive any expiration, completion or termination of this Agreement. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

9.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Section 9.1, and any Additional Insured requirements under Article 11, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE 10. LIMITATION OF LIABILITY

10.1 SUBJECT TO 10.2, BELOW, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE OR ANY OTHER INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A PARTY, WHETHER ACTIVE OR PASSIVE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

10.2 EXCLUSIONS FROM WAIVER. NOTWITHSTANDING ANYTHING CONTAINED IN SECTION 10.1 ABOVE, CITY AND CONSULTANT MUTUALLY AGREE THAT THE FOLLOWING LIABILITIES, OBLIGATIONS AND DAMAGES ARE SPECIFICALLY EXCLUDED FROM ANY WAIVER OF CONSEQUENTIAL DAMAGES SET FORTH IN SECTION 10.1:

- (a) CONSULTANT'S OBLIGATION TO INDEMNIFY OWNER OR OTHER INDEMNITEES UNDER SECTION 9.1 FOR CONSEQUENTIAL DAMAGES ARISING OUT OF CLAIMS (A) ASSERTED UNDER SECTION 9.1 AND 9.2 AND (B) SUFFERED BY THIRD PARTIES WITH RESPECT TO CLAIMS COVERED BY CONSULTANT'S INDEMNIFICATION OBLIGATIONS;**
- (b) A PARTY'S WAIVER IN SECTION 10.1 WILL NOT APPLY TO THE EXTENT ITS EFFECT WOULD BE TO LIMIT THE OBLIGATION OF AN INSURER TO PAY INSURANCE PROCEEDS THAT WOULD, BUT FOR THE OPERATION OF SUCH WAIVER, BE PAYABLE BY THAT INSURER;**
- (c) ANY DIRECT OR "NON-CONSEQUENTIAL" DAMAGE(S) INCURRED BY OWNER OR CONSULTANT;**
- (d) COSTS OF CORRECTIVE OR COMPLETION WORK CAUSED BY OR RESULTING FROM THE CONSULTANT'S FAILURE TO COMPLY WITH THE REQUIREMENTS IMPOSED ON**

THE CONSULTANT BY THIS AGREEMENT OR ANY WORK ORDERS ISSUED THEREUNDER;

- (e) FINES AND PENALTIES LEVIED BY A REGULATORY AGENCY;**
- (f) GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CONSULTANT OR ITS SUBCONSULTANTS, THEIR EMPLOYEES OR ANY FOR WHOM THEY ARE RESPONSIBLE.**

10.3 THE PARTIES AGREE THAT NEITHER PARTY'S INDIVIDUAL EMPLOYEES, OFFICERS, ELECTED OFFICIALS, DIRECTORS OR PRINCIPALS SHALL BE SUBJECT TO ANY PERSONAL LIABILITY AS A RESULT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY WORK ORDER FOR SERVICES HEREUNDER, EXCEPT AS REQUIRED UNDER THE TEXAS OCCUPATIONS CODE § 1051. IN CASES INVOLVING THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CITY'S, OR CONSULTANT'S EMPLOYEES, OFFICERS, DIRECTORS OR PRINCIPALS, THE FOREGOING LIMITATION SHALL NOT APPLY AND THE OTHER PARTY SHALL BE ENTITLED TO ALL AVAILABLE REMEDIES AT LAW OR IN EQUITY.

ARTICLE 11. INSURANCE

11.1 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subconsultants. The policies, limits and endorsements required are as set forth below.

Each Subconsultant must provide Worker's Compensation/Employer's liability, Professional Liability, CGL, and Automobile Liability coverage with equal limits as Consultant; provided, however, the limits of such insurance may be adjusted in accordance with the nature of each Subconsultant's operations but, if such adjustment is requested, it must be submitted to City for approval before the Consultant enters into an agreement or any work commences under the agreement in question.

During the term of the Agreement Consultant's insurance policies shall meet the minimum requirements of this section.

11.2 Types. Consultant shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Workers Compensation/Employer's Liability
- (d) Professional Liability.

11.3 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents,

employees and volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Agreement shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement (attached hereto as "**Attachment C**" and incorporated by reference), and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

11.4 General Requirements Applicable to All Policies. The following General Requirements to all policies shall apply:

- (a) Only licensed insurance carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days prior written notice has been given to the City of West Lake Hills.
- (e) The Certificates of Insurance shall be prepared and executed by the insurance carrier or its authorized agent on the most current State of Texas Department of Insurance-approved forms.
- (f) Additional Insured Status. To the fullest extent permitted under Texas law City, and Indemnitees, shall be included as additional insureds on each CGL policy procured by Consultants and Subconsultants using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations) or endorsements providing equivalent coverage. Such parties shall also be included as additional insureds on all other policies procured by Consultant and Subconsultants except Worker's Compensation/Employer's Liability and Professional Liability with endorsements approved by City. Notwithstanding anything to the contrary, such additional insured coverage shall not exceed that allowed under Texas law.

11.5 Commercial General Liability Requirements. The following Commercial General Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (d) The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground

coverage.

- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.6 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current. A. M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.7 Workers' Compensation/Employers Liability Insurance Requirements. The following Workers' Compensation Insurance requirements shall apply; and the term "contractor" shall be construed to mean "Consultant" as identified in this Agreement:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy; either directly through their employer's policy (the Consultant's, or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) The workers' compensation/employer's liability insurance shall include the following terms:
 - (1) Employer's Liability limits of \$1,000,000 for each accident is required.
 - (2) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas

Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

(1) Definitions:

- (i) Certificate of coverage (“certificate”) - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers’ compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the Project.
 - (ii) Duration of the Project - includes the time from the beginning of the work on the Project until the Consultant’s/person’s work on the project has been completed and accepted by the governmental entity.
 - (iii) Persons providing services on the project (“subcontractors” Tex. Lab. Code Ann. § 406.096) - includes all persons or entities performing all or part of the services the Agreement or has undertaken to perform on the project, regardless of whether that person contracted directly with the Consultant and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, subconsultants, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (2) The Consultant shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Tex. Lab. Code Ann. § 401.011(44) for all employees of the Consultant providing services on the project, for the duration of the project.
 - (3) The Consultant must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
 - (4) If the coverage period shown on the Consultant’s current certificate of coverage ends during the duration of the Project, the Consultant must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
 - (5) The Consultant shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (i) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of

- coverage showing coverage for all persons providing services on the project; and
- (ii) no later than seven calendar days after receipt by the Consultant, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (6) The Consultant shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
 - (7) The Consultant shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Consultant knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.
 - (8) The Consultant shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
 - (9) The Consultant shall contractually require each person with whom it contracts to provide services on a project, to:
 - (i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Tex. Lab. Code Ann. § 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (ii) provide to the Consultant, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (iii) provide the Consultant, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (iv) obtain from each other person with whom it contracts, and provide to the Consultant:
 - (A) a certificate of coverage, prior to the other person beginning work on the project; and
 - (B) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (C) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (D) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew

or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

- (E) Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
- (F) By signing this Agreement, or providing, or causing to be provided a certificate of coverage, the Consultant is representing to the governmental entity that all employees of the Consultant who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (G) The Consultant's failure to comply with any of these provisions is a breach of Contract by the Consultant that entitles the governmental entity to declare the Contract void if the Consultant does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

11.8 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum of \$2,000,000 per claim and \$5,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of West Lake Hills when requested.
- (c) Professional liability coverage will be obtained and maintained by Consultant and Subconsultant with policy limits set forth above to insure from and against all negligent acts, errors, and omissions in the professional services performed by them, and their agents, representatives, employees, subcontractors, and subconsultants. Coverage shall provide full prior acts coverage or a retroactive date not later than the date the services are first performed in connection with the Project. Policies shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or Subconsultants; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or

multiplied damages; or (vi) design services. All policies shall be maintained until all claims arising out of the services provided by each entity are barred by the statute of repose under Texas law. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.

- (d) Retroactive date must be shown on certificate.

ARTICLE 12. CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 City may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. In the event that any such change, through no fault of Consultant, shall impact Consultant's compensation or schedule, then (a) such changes shall be authorized by written change order issued by City and accepted by Consultant, and (b) an equitable adjustment shall be made to the Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

12.2 City may for convenience terminate this Agreement, any Work Order issued under this Agreement, or Consultant's right to perform Services under this Agreement or any Work Order by at any time giving seven (7) days written notice of such termination. In such event, City shall have the right but not the obligation to assume all obligations and commitments that Consultant may have in good faith undertaken or incurred in connection with the Services terminated, and City shall pay Consultant, as its sole and exclusive remedy, for Services properly performed to date of termination and for reasonable costs of closing out such Services provided City has pre-approved such costs. Consultant shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, Consultant shall invoice City for all services performed by Consultant prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by City and City's receipt of all Work Product. Consultant shall include a similar provision allowing for termination for convenience on similar terms in all its lower-tier subcontracts.

12.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that City terminates this Agreement or any Work Order for cause, Consultant shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to City's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, Consultant is declared in default and/or terminated by City under any Work Order with City, City shall have the right to offset and apply any amounts which might be owed to City by Consultant against any earned but unpaid amounts owed to Consultant by City under any Work Order. In the event any Work Order

is terminated by City, Consultant shall promptly deliver to City all Work Product with respect to such terminated Work Order.

12.4 The City may, without cause, order the Consultant in writing to suspend, delay, or interrupt this Agreement or any Work Order in whole or in part for such period of time as the City may determine. Upon receipt of such notice, the Consultant shall, unless the notice requires otherwise, immediately discontinue Services on the date and to the extent specified in the notice. The Consultant shall be compensated for Services performed prior to notice of such suspension. When the services under this Contract are resumed, the Consultant shall be compensated for expenses directly and necessarily incurred in the interruption and resumption of the Consultant's services, without markup.

12.5 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the Parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City:

**City of West Lake Hills
Attn: City Administrator
911 Westlake Dr.
West Lake Hills, Texas 78746**

Consultant:

**Colliers Engineering & Design, Inc.
Attn: Legal
101 Crawfords Corner Rd. Suite 3400 Holmdel,
NJ 07733**

**ARTICLE 13
FORCE MAJEURE**

13.1 Any delay in performance or non-performance of any obligation other than an obligation to make a payment as required under this Agreement or any Work Order, of Consultant contained herein shall be excused to the extent such delay in performance or non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, pandemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the reasonable control of and cannot be reasonably anticipated by or the effects cannot be reasonably alleviated by Consultant and (ii) prevents the performance of Services.

13.2 If Consultant is affected by Force Majeure, Consultant shall promptly provide notice to City, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five (5) days after Consultant first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on Consultant's ability to communicate with City. Consultant shall use its commercially

reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14. SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 City and Consultant bind themselves and their successors, executors, administrators and permitted assigns to the other Party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

14.2 No right or interest in this Agreement or any Work Order shall be assigned by Consultant or City without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Work Order with respect to which Consultant has elected to subcontract, Consultant will notify City in writing of the identity of the particular subcontractor, subconsultant or supplier Consultant intends to employ for the performance of such part of the Services and the scope of Services it will perform. City shall have the right within twenty-one (21) calendar days of such written notice to disallow Consultant's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by Consultant as a result of such disallowance shall be borne by City.

ARTICLE 15. SEVERABILITY; NON-WAIVER

15.1 If any provision or portion thereof of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect. The Parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the Parties.

15.2 Failure by City in any instance to insist upon observance or performance by Consultant of any term, condition or obligation of this Agreement shall not be deemed a waiver by City of any such observance or performance. No waiver by City of any term, condition, obligation or breach of this Agreement will be binding upon City unless in writing, and then will be for the particular instance specified in such writing only. Payment of any sum by City to Consultant with knowledge of any breach will not be deemed a waiver of such breach or any other breach.

ARTICLE 16. LICENSE REQUIREMENTS

16.1 The Consultant and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Work Order.

ARTICLE 17. ENTIRE AGREEMENT

17.1 This Agreement and all Work Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties.

ARTICLE 18. GOVERNING LAW; VENUE

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles. Venue of all dispute resolution proceedings arising out of, connected with or relating to this Agreement, shall be in Travis County, Texas.

ARTICLE 19. DISPUTE RESOLUTION;

19.1 Each party to this Agreement is required to continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable to perform under the circumstances.

19.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Agreement agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

19.3 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

- (a) Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon the written agreement of both parties.
- (b) In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following

the date of the request for mediation, all conditions precedent in this Article 19 shall be deemed to have occurred.

- (c) The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Travis County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.
- (d) Consultant and City expressly agree that, in the event of litigation, both parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law or any other provision for payment of Attorneys' fees.
- (e) Notwithstanding the foregoing, in the event City and any other consultant and/or any contractor are involved in a dispute in connection with a project for which Consultant has provided Services, and City, in its sole discretion, determines that Consultant's participation in any dispute resolution meeting or mediation proceeding between City and any such consultant and/or contractor is necessary to the resolution of such dispute, Consultant agrees to attend and participate at its own cost in any such dispute resolution meeting or mediation proceeding.

19.4 Notwithstanding the foregoing, before bringing an action asserting a claim for a construction defect as provided by Tex. Gov't Code §§ 2272.001 et seq., as amended, City shall provide Consultant a written report by certified mail, return receipt requested, that clearly: identifies the specific construction defect on which the claim is based; describes the present physical condition of the affected structure; and describes any modification, maintenance, or repairs to the affected structure made by City or others since the affected structure was initially occupied or used. Not later than the five (5) days after the date Consultant receives a report under this section, Consultant must provide a copy of the report to each subcontractor/subconsultant retained on the construction of the affected structure whose work is subject to the claim.

19.5 Before bringing an action asserting a claim to which this chapter applies, City shall allow each party with under this Agreement with City is subject to the claim and any known subcontractor/subconsultant or supplier who is subject to the claim:

- (a) a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after sending the report required by section 19.4; and
- (b) at least 120 days after the inspection to:
 - (1) correct any construction defect or related condition identified in the report; or
 - (2) enter into a separate agreement with City to correct any construction defect or related condition identified in the report.

- (c) City is not required to allow a party to make a correction or repair under this section 19.5 if:
 - (1) the party:
 - (i) is a contractor and cannot provide payment and performance bonds to cover the corrective work;
 - (ii) cannot provide liability insurance or workers' compensation insurance;
 - (iii) has been previously terminated for cause by the City; or
 - (iv) has been convicted of a felony; or
 - (2) the City previously complied with the process required by Subsection (a) regarding a construction defect or related condition identified in the report and:
 - (i) the defect or condition was not corrected as required by Subsection (a)(2)(A) or an agreement under Subsection 19.5(b)(2) or
 - (ii) the attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

19.6 If a report provided by City under Section 19.4 identifies a construction defect that is corrected under Section 19.5 or for which the City recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by the City to obtain the report with respect to identification of that construction defect.

19.7 This Section 19.5 does not prohibit or limit the City from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public.

ARTICLE 20. ELECTRONIC SIGNATURES; COUNTERPARTS

20.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Duplicate copies of duly executed and delivered counterparts of this Agreement shall be deemed to have the same full force and effect as originals and may be relied upon as such. Notwithstanding the foregoing, the Parties agree that this Agreement and any Work Order may be executed using electronic signatures at the option and in the discretion of City, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of City regarding electronic signatures shall apply.

ARTICLE 21. PUBLICITY

21.1 Neither Consultant nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of City, unless such materials have first been reviewed and approved in writing by City. This provision shall not apply to mandatory reports which Consultant or its subconsultants are required by law to file with governmental authorities.

ARTICLE 22. GENERAL TERMS

22.1 Cumulative Mutual Remedies. In the event of default by a Party herein, the other Party shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret, or enforce, the terms of the Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

22.2 State or Federal Laws. This Contract is subject to all applicable federal and State laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, State or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

22.3 No Third-Party Beneficiary. The Parties are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year herein above first written.

CONSULTANT:
Colliers Engineering & Design, Inc.

By: 
Name: Christopher Otto, P.E, CFM
Title: Regional Discipline Leader

Date: 6/9/25

ATTEST:

CITY:
City of West Lake Hills

By: _____
Trey Fletcher
City Administrator

Date: _____

ATTEST:

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, City will compensate Consultant on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Work Order. Professional is defined as Administrator, supervisor, engineer, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

X.XX for professional and non-professional staff working at Consultant or its subcontractor, subconsultant, or vendor offices.

X.XX for professional and non-professional staff working in the field during construction or at City offices for a minimum period of six (6) consecutive months.

X.XX for construction inspectors working in the field.

(b) EXPENSES

“Billable Expenses” include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). “Billable Expenses” include: subconsultants; travel expenses to and from locations outside Guadalupe and Bexar County; and copies of all deliverables submitted to City. All local vehicle use outside Guadalupe and Bexar Counties will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

City will compensate Consultant on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Work Order. City may ask Consultant for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary

breakdown showing the labor hours and cost, subconsultant costs, and other direct costs included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. Consultant will submit and City will pay monthly invoices based on the mutually agreed upon percentage of the Project completed.

ATTACHMENT B

This Work Order is issued subject to, is governed by and incorporates by reference that certain Master Professional Services Agreement, between the City and Consultant effective _____, 20__.

Work Order Date: _____

CONSULTANT: _____

Consultant Project Manager: _____

City Point of Contact: _____

Type of Compensation: _____

Compensation: _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: See Attached.

Agreed to by:

CITY:

CONSULTANT:

CITY OF WEST LAKE HILLS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT C
CERTIFICATE OF INSURANCE

June 16, 2025

City of West Lake Hills
Attn.: Mr. Trey Fletcher, AICP, ICMA-CM
City Administrator
911 Westlake Drive, West Lake Hills
Texas, 78746

Work Order for Professional Services
Development Review Services
Proposal No.: 25006063P

Dear Mr. Fletcher,

Colliers Engineering & Design, Inc. is pleased to submit this work order to provide professional services for the Development Services Department for the City of West Lake Hills, Texas.

This proposal is divided into three sections as follows:

Section I – Scope of Services

Section II – Technical Staff Hourly Rate Schedule and Reimbursable Expenses

Section III – Client Contract Authorization

The order in which the following scope of services are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Colliers Engineering & Design to meet project schedules.

Section I – Scope of Services

Based on our conversations and information noted above, we propose to complete the following:

Plat/Plan Review Services

- The City Engineer shall provide technical review of, and answer inquiries relating to, site plans, subdivision plans, improvement plans, land disturbance plans, construction plans and escrows relating to projects proposed by applicants to be developed in the City to ensure that such conform to codes adopted by the City.
- Review basic utility requirements and wastewater connections associated with new or renovated projects.
- The City Engineer shall, upon request, attend meetings of affected property owners, and meetings with city staff and developers.
- Conduct periodic site visits for consultation, construction observation and project close outs, as needed.

- CED will review and provide professional recommendations for a variety of functions including right-of-way requirements and administration (acquisitions, dedications, vacations/abandonments and easements), site development and subdivision plans, drainage and flood control, utility considerations, variances, subdivisions and planned unit development agreements.
- CED will provide services consisting of engineering, design, consultation, project management, plan review, plat review, and other services, acting as the City's Designated City Engineer, on a task order basis as required to perform and complete the Scope of Work Services specifically identified below:
 - Land Study
 - Plat reviews
 - Drainage Study/Report Review
 - Geotech Report Review
 - Traffic Impact Analysis Review
 - Construction Plans – Public Infrastructure
 - Preliminary/Final Acceptance Process

This task will be performed typically by the following titles with approximate percentages: Senior Principal/Principal 10%, Senior Project Specialist 20%, Specialist 70%.

Schedule of Fees

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services. Monthly invoices will be billed on an hourly basis.

Task Name	Fee
Task 1.0 Plan Review Services	\$150,000.00
Total (Hourly)	\$150,000.00

The review fees will be Cost Plus to Max type of fee per plan reviews. Delivery, mileage, printing and reproduction, overnight mail service and postage costs are not included in the lump sum fees and will be added to each monthly invoice. **Payment terms are NET30 of receipt of invoice.**

Exclusions and Understandings

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement.

- Any items and/or scope not specifically listed in the proposal.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary, Colliers Engineering & Design may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees regarding the extra services.

Section II – Rate Schedule

Technical Staff Rates 2025	
Billing Titles	Hourly Rates
Executive Principal	360.00
Senior Principal	345.00
Principal	320.00
Senior Technical Director	295.00
Senior Project Manager	270.00
Technical Director	230.00
Project Manager	220.00
Senior Project Specialist	200.00
Project Specialist	190.00
Technical Professional	180.00
Technical Specialist	170.00
Specialist	160.00
Senior Data Technician	150.00
Senior Technical Assistant	140.00
Technical Assistant	125.00
Field Technician	115.00
Data Technician	115.00
Survey Crew – 1 Person w/Robotic Equipment	195.00
Additional Survey Crew Member	85.00
SUE Crew (designating) – 1 Person	160.00
Additional (designating) Member	85.00
SUE Crew (locating) – 2 Person	220.00
Additional (locating) Member	85.00
Expert Witness	425.00
Sr. LSRP	330.00
LSRP	290.00

Reimbursable Expenses	
General Expenses	Cost + 15%
Travel (Hotel, Airfare, Meals)	Cost + 15%
Sub-Consultants/Sub-Contractors	Cost + 20%
Plotting	4.50 / Each
Computer Mylars / Color Plots	100.00 / Each
Photocopies	0.19 / Each
Color Photocopies	2.05 / Each
Document Binding	4.05 / Each
Portable Media	100.00 / Each
Exhibit Lamination (24" x 36" or larger)	90.00 / Each
Initial Digital Signature	300.00
Additional Digital Signatures	75.00 / Each
Mileage Reimbursement*	0.655 / Per Mile
	Field Vehicle 0.75 / Per Mile

*Mileage reimbursement subject to change based upon IRS standard mileage rate.

Section III – Client Contract Authorization

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Signature

Date

Printed Name

Title

If you find this proposal acceptable, please sign where indicated above in Section III, and return one signed copy to this office **Payment terms are NET30 of receipt of invoice**. This proposal is valid until (60 days per business terms).

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Sincerely,

Colliers Engineering & Design, Inc.



Bobby J. Torres, P.E.
Department Manager - Municipal

AS

O:\Proposals\Municipal\Proposals\2025\06 - June\250616 - City of West Lake Hills_Development Plan Reviews_25006063P.docx

June 16, 2025

City of West Lake Hills
Attn.: Mr. Trey Fletcher, AICP, ICMA-CM
City Administrator
911 Westlake Drive, West Lake Hills
Texas, 78746

Work Order for Professional Services
City of West Lake Hills - General Engineering Services
Proposal No.: 25006077P

Dear Mr. Fletcher,

Colliers Engineering & Design, Inc. is pleased to submit this work order to provide professional services to the Public Works or Development services departments in the City of West Lake Hills, Texas.

This proposal is divided into three sections as follows:

Section I – Scope of Services

Section II – Technical Staff Hourly Rate Schedule and Reimbursable Expenses

Section III – Client Contract Authorization

The order in which the following scope of services are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Colliers Engineering & Design to meet project schedules.

Section I – Scope of Services

Based on our conversations and information noted above, we propose to complete the following:

Task 1: General Engineering Services

- CED shall perform general civil engineering, planning, surveying, geotechnical analysis, construction management, environmental reviews, floodplain management and coordination with the City staff as needed.
- CED shall recommend regulations and ordinances, policies and procedures pertaining to engineering and development matters.
- GIS support for various tasks needed by the City. Tasks shall be small in scope, not to exceed \$10,000.00. Task with larger scopes will be accomplished through a separate work order.
- CED shall serve as the City's Floodplain Administrator and perform all required evaluations, recommendations and reporting.
- Municipal advisory – building/developing Public Works Department

This task will be performed typically by the following titles with approximate percentages: Senior Principal/Principal 15%, Senior Project Specialist 20%, Specialist 65%.

Task 2: Meetings

CED will attend meetings with City staff to discuss development, proposed improvements, planning of projects, OPCC, etc. This will typically consist of weekly meetings to discuss overall project status and any changes or updates. This may also include meetings with the City Manager or client's representative.

This task will be performed typically by the following titles with approximate percentages: Senior Principal/Principal 45%, Senior Project Specialist 55%

Schedule of Fees

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services. Monthly invoices will be billed on an hourly basis.

Task Name	Fee
Task 1: General Engineering Services	\$75,000.00
Task 2: Meetings	\$50,000.00
Total (Hourly)	\$125,000.00

Delivery, mileage, printing and reproduction, overnight mail service and postage costs are not included in the lump sum fees and will be added to each monthly invoice. **Payment terms are NET30 of receipt of invoice.**

Exclusions and Understandings

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement.

- Any items and/or scope not specifically listed in the proposal.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary, Colliers Engineering & Design may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees regarding the extra services.

Section II – Rate Schedule

Technical Staff Rates 2025

Billing Titles	Hourly Rates
Executive Principal	360.00
Senior Principal	345.00
Principal	320.00
Senior Technical Director	295.00
Senior Project Manager	270.00
Technical Director	230.00
Project Manager	220.00
Senior Project Specialist	200.00
Project Specialist	190.00
Technical Professional	180.00
Technical Specialist	170.00
Specialist	160.00
Senior Data Technician	150.00
Senior Technical Assistant	140.00
Technical Assistant	125.00
Field Technician	115.00
Data Technician	115.00
Survey Crew – 1 Person w/Robotic Equipment	195.00
Additional Survey Crew Member	85.00
SUE Crew (designating) – 1 Person	160.00
Additional (designating) Member	85.00
SUE Crew (locating) – 2 Person	220.00
Additional (locating) Member	85.00
Expert Witness	425.00
Sr. LSRP	330.00
LSRP	290.00

Reimbursable Expenses

General Expenses	Cost + 15%
Travel (Hotel, Airfare, Meals)	Cost + 15%
Sub-Consultants/Sub-Contractors	Cost + 20%
Plotting	4.50 / Each
Computer Mylars / Color Plots	100.00 / Each
Photocopies	0.19 / Each
Color Photocopies	2.05 / Each
Document Binding	4.05 / Each
Portable Media	100.00 / Each
Exhibit Lamination (24" x 36" or larger)	90.00 / Each
Initial Digital Signature	300.00
Additional Digital Signatures	75.00 / Each
Mileage Reimbursement*	0.655 / Per Mile
	Field Vehicle 0.75 / Per Mile

*Mileage reimbursement subject to change based upon IRS standard mileage rate.

Section III – Client Contract Authorization

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Signature

Date

Printed Name

Title

If you find this proposal acceptable, please sign where indicated above in Section III, and return one signed copy to this office. **Payment terms are NET30 of receipt of invoice.** This proposal is valid until (60 days per business terms).

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Sincerely,

Colliers Engineering & Design, Inc.



Bobby J. Torres, P.E.
Department Manager - Municipal

O:\Proposals\Municipal\Proposals\2025\06 - June\250616 - City of West Lake Hills_General Engineering_25006077P_rev.docx

June 16, 2025

City of West Lake Hills
Attn.: Mr. Trey Fletcher, AICP, ICMA-CM
City Administrator
911 Westlake Drive, West Lake Hills
Texas, 78746

Work Order for Professional Services
City of West Lake Hills - Street Maintenance
Proposal No.: 25006064P

Dear Mr. Fletcher,

Colliers Engineering & Design, Inc. is pleased to submit this work order to provide professional services to the Public Works Department in the City of West Lake Hills, Texas.

This proposal is divided into three sections as follows:

Section I – Scope of Services

Section II – Technical Staff Hourly Rate Schedule and Reimbursable Expenses

Section III – Client Contract Authorization

The order in which the following scope of services are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Colliers Engineering & Design to meet project schedules.

Section I – Scope of Services

Based on our conversations and information noted above, we propose to complete the following:

Task 1.0 Street Maintenance

We will perform the following tasks as part of the street maintenance activities:

- CED will provide project development and plan preparation on various projects, using pavement management principles in line with the City of West Lake Hills priorities.
- CED will provide planning, analysis and alternative standards on street maintenance projects; demand modeling; roadway design; provide guidance on Right-of-Way usage and allocation;
- Collaborate with Texas Department of Transportation, Capital Area Metropolitan Planning Organization, and other State/Regional Transportation agencies' policies, procedures, and funding mechanisms.

- CED will serve in an advisory capacity to the City on policy and mechanisms for assessing development's impacts on the transportation network;
- Scoping and review of Traffic Impact Analyses and/or similar type analyses
- Street Maintenance Program: CED will monitor, evaluate and prioritize street maintenance improvements for the City. Various methods will be used to accomplish this task and will be closely coordinated with the City Staff/Council. CED will provide various options available with a recommendation for each improvement identified.

This task will be performed typically by the following titles with approximate percentages: Senior Principal/Principal 10%, Senior Project Specialist 20%, Specialist 70%.

Task 2.0 Construction Management Plan

- Coordinate and attend project pre-construction meetings, prepare meeting minutes and the Notice to Proceed;
- Provide minor plan changes, discussions and/or negotiations with authoritative agencies based upon actual field conditions;
- Conduct site visits at a frequency necessary to ensure Contractor's compliance with the Contract Documents;
- Provide photographs of work in progress;
- Review shop drawings provided by the Contractor and/or provide engineering redesign if needed to adapt to actual field conditions;
- Review and monitor the construction schedule provided by the Contractor. Coordinate progress meetings as necessary with all stakeholders;
- Prepare regular progress reports;
- Maintain copies of all files related to this project including, but not limited to, all correspondence, permits, Requests for Information, shop drawings/reviews, design modifications, payment estimates, change orders, cost estimates, inspection reports, record plans and specifications, etc.
- Project Closeout, including punchlists, final submittals, project certifications, etc.; and,
- Prepare change orders and invoice review.

Coordination with the contractor's schedule will ensure that construction is receiving the necessary attention during all phases of construction. In addition, Colliers Engineering & Design will review and approve all payment vouchers submitted by the Contractor before they are presented to the municipality for payment. As the project approaches completion, the Contractor will also be presented with a detailed punch-list of the items requiring repair and/or correction.

Please note that Colliers Engineering & Design accepts no responsibility for construction methodology utilized by the contractors and sub-contractors, including worker health and safety issues.

This task will be performed typically by the following titles with approximate percentages: Senior Principal/Principal 5%, Senior Project Specialist 60%, Specialist 35%.

Schedule of Fees

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services. Monthly invoices will be billed on an hourly basis.

Task Name	Fee
Task 1.0 Street Maintenance (Allowance Not to Exceed)	\$75,000.00
Task 2.0 Construction Project Management (Allowance Not to Exceed)	\$25,000.00
Total (Hourly)	\$100,00.00

This Contract and Fee Schedule are based upon the acceptance of Colliers Engineering & Design's Business Terms and Conditions contained in Section II of this Contract. Delivery, mileage, printing and reproduction, overnight mail service and postage costs are not included in the hourly fees and will be added to each monthly invoice. **Payment terms are NET30 of receipt of invoice.**

Exclusions and Understandings

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement.

- Any items and/or scope not specifically listed in the proposal.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary, Colliers Engineering & Design may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees regarding the extra services.

Section II – Rate Schedule

Technical Staff Rates 2025	
Billing Titles	Hourly Rates
Executive Principal	360.00
Senior Principal	345.00
Principal	320.00
Senior Technical Director	295.00
Senior Project Manager	270.00
Technical Director	230.00
Project Manager	220.00
Senior Project Specialist	200.00
Project Specialist	190.00
Technical Professional	180.00
Technical Specialist	170.00
Specialist	160.00
Senior Data Technician	150.00
Senior Technical Assistant	140.00
Technical Assistant	125.00
Field Technician	115.00
Data Technician	115.00
Survey Crew – 1 Person w/Robotic Equipment	195.00
Additional Survey Crew Member	85.00
SUE Crew (designating) – 1 Person	160.00
Additional (designating) Member	85.00
SUE Crew (locating) – 2 Person	220.00
Additional (locating) Member	85.00
Expert Witness	425.00
Sr. LSRP	330.00
LSRP	290.00

Reimbursable Expenses	
General Expenses	Cost + 15%
Travel (Hotel, Airfare, Meals)	Cost + 15%
Sub-Consultants/Sub-Contractors	Cost + 20%
Plotting	4.50 / Each
Computer Mylars / Color Plots	100.00 / Each
Photocopies	0.19 / Each
Color Photocopies	2.05 / Each
Document Binding	4.05 / Each
Portable Media	100.00 / Each
Exhibit Lamination (24" x 36" or larger)	90.00 / Each
Initial Digital Signature	300.00
Additional Digital Signatures	75.00 / Each
Mileage Reimbursement*	0.655 / Per Mile
	Field Vehicle 0.75 / Per Mile

*Mileage reimbursement subject to change based upon IRS standard mileage rate.

Section III – Client Contract Authorization

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Signature

Date

Printed Name

Title

If you find this proposal acceptable, please sign where indicated above in Section III, and return one signed copy to this office. **Payment terms are NET30 of receipt of invoice.** This proposal is valid until (60 days per business terms).

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Sincerely,

Colliers Engineering & Design, Inc.



Bobby J. Torres, P.E.
Department Manager - Municipal

O:\Proposals\Municipal\Proposals\2025\06 - June\250616 - City of West Lake Hills_Street Maintenance_25006064P_rev.docx

June 18, 2025

City of West Lake Hills
Attn.: Mr. Trey Fletcher, AICP, ICMA-CM
City Administrator
911 Westlake Drive, West Lake Hills
Texas, 78746

Work Order for Professional Services
City of West Lake Hills – Drainage Manual
Proposal No.: 25007447P

Dear Mr. Fletcher,

Colliers Engineering & Design, Inc. is pleased to submit this work order to provide professional services to the Public Works Department in the City of West Lake Hills, Texas.

This proposal is divided into three sections as follows:

Section I – Scope of Services

Section II – Technical Staff Hourly Rate Schedule and Reimbursable Expenses

Section III – Client Contract Authorization

The order in which the following scope of services are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Colliers Engineering & Design to meet project schedules.

Section I – Scope of Services

Based on our conversations and information noted above, we propose to complete the following:

Task 1: Phase-1 Code Review

- CED will review the current Drainage and Erosion Control Design Manual, for the City of West Lake Hills, dated May 2020 as part of Phase-1 of this task. Our team will prepare a list of recommendations on parts of the code that could be potentially added, removed, modified or revised. We will discuss our recommendations with the city staff and will identify items for making revisions to the code, based on the outcome of the discussions. Depending on the list of items that are derived from this exercise, CED will prepare a detailed scope and fee as Phase -II and present it to the city for approval. The actual revisions to the code will be prepared as recommended-updates as part of Phase-II and will be presented to the city to proceed with next steps of incorporation.
- CED will prepare a presentation on our findings and recommendations.

- Review and update impervious cover requirements to be in compliance with TCEQ regulations.

This task will be performed typically by the following titles with approximate percentages:
Principal 20%, Senior Project Manager 60%, Specialist 20%

Schedule of Fees

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services.

Task Name	Fee
Task 1: Phase-1 Code Review	\$4,000.00
Lump Sum	\$4,000.00

Delivery, mileage, printing and reproduction, overnight mail service and postage costs are not included in the lump sum fees and will be added to each monthly invoice. **Payment terms are NET30 of receipt of invoice.**

Exclusions and Understandings

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement.

- Any items and/or scope not specifically listed in the proposal.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary, Colliers Engineering & Design may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees regarding the extra services.

Section II – Rate Schedule

Technical Staff Rates 2025

Billing Titles	Hourly Rates
Executive Principal	360.00
Senior Principal	345.00
Principal	320.00
Senior Technical Director	295.00
Senior Project Manager	270.00
Technical Director	230.00
Project Manager	220.00
Senior Project Specialist	200.00
Project Specialist	190.00
Technical Professional	180.00
Technical Specialist	170.00
Specialist	160.00
Senior Data Technician	150.00
Senior Technical Assistant	140.00
Technical Assistant	125.00
Field Technician	115.00
Data Technician	115.00
Survey Crew – 1 Person w/Robotic Equipment	195.00
Additional Survey Crew Member	85.00
SUE Crew (designating) – 1 Person	160.00
Additional (designating) Member	85.00
SUE Crew (locating) – 2 Person	220.00
Additional (locating) Member	85.00
Expert Witness	425.00
Sr. LSRP	330.00
LSRP	290.00

Reimbursable Expenses

General Expenses	Cost + 15%
Travel (Hotel, Airfare, Meals)	Cost + 15%
Sub-Consultants/Sub-Contractors	Cost + 20%
Plotting	4.50 / Each
Computer Mylars / Color Plots	100.00 / Each
Photocopies	0.19 / Each
Color Photocopies	2.05 / Each
Document Binding	4.05 / Each
Portable Media	100.00 / Each
Exhibit Lamination (24" x 36" or larger)	90.00 / Each
Initial Digital Signature	300.00
Additional Digital Signatures	75.00 / Each
Mileage Reimbursement*	0.655 / Per Mile
	Field Vehicle 0.75 / Per Mile

*Mileage reimbursement subject to change based upon IRS standard mileage rate.

Section III – Client Contract Authorization

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Signature

Date

Printed Name

Title

If you find this proposal acceptable, please sign where indicated above in Section III, and return one signed copy to this office. **Payment terms are NET30 of receipt of invoice.** This proposal is valid until (60 days per business terms).

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Sincerely,

Colliers Engineering & Design, Inc.



Bobby J. Torres, PE
Department Manager - Municipal

as

O:\Proposals\Municipal\Proposals\2025\06 - June\250618 - City of West Lake Hills - Drainage Manual_25007447P .docx

June 18, 2025

City of West Lake Hills
Attn.: Mr. Trey Fletcher, AICP, ICMA-CM
City Administrator
911 Westlake Drive, West Lake Hills
Texas, 78746

Work Order for Professional Services
City of West Lake Hills - MS4 Program Support
Proposal No.: 25006568P

Dear Mr. Fletcher,

Colliers Engineering & Design, Inc. is pleased to submit this work order to assist with the Municipal Separate Storm Sewer System (MS4) General Permit. As you may be aware, The Texas Commission on Environmental Quality (TCEQ) adopted the 2024 TPDES Phase II (Small) MS4 General Permit (TXR040000) on August 14, 2024. This renewed permit was issued and became effective the following day, August 15, 2024. CED is ready to support the City with its MS4 compliance needs.

This proposal is divided into three sections as follows:

Section I – Scope of Services

Section II – Technical Staff Hourly Rate Schedule and Reimbursable Expenses

Section III – Client Contract Authorization

The order in which the following scope of services are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Colliers Engineering & Design to meet project schedules.

Section I – Scope of Services

Upon receipt of a Notice to Proceed (NTP) from the City, CED will execute the following tasks to accomplish the purpose of the task order:

Task 1: Storm Water Management Program Support

This task will include review of the Storm Water Management Program (SWMP), currently in place. CED will provide enforcement of the approved permit to include evaluation and implementation of best management practices and routine inspections as needed for compliance. Additionally, this may include the following Minimum Control Measures (MCM):

1. Public Education and Outreach
2. Pollution Prevention and Housekeeping
3. Construction Site Runoff Control

KFW Engineers + Surveying is now Colliers Engineering & Design

4. Post Construction Stormwater Management
5. Illicit Discharge Detection and Elimination (IDDE)

CED will assist in updating Annual Reports as needed for compliance.

These tasks will be performed typically by the following titles with approximate percentages:
Principal 10%, Senior Project Specialist 20%, Specialist 70%

Schedule of Fees

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services.

Task Name	Fee
Task 1: Stormwater Management Program Update	\$14,000.00
Total (Hourly)	\$ 14,000.00

The Client will be responsible for reimbursing CED for expenses, including but not limited to application fees such **NOI application fee amounting to \$400**, printing and reproduction, mileage, courier and express delivery services, special/overnight mailings, facsimile transmissions, specialized equipment and laboratory fees, and the cost of acquiring materials specifically for the City. However, these expenses will only be submitted for payment if ordered by the City in writing. Reimbursable charges will be added to each monthly invoice and will be the Client's responsibility. **Payment terms are NET30 of receipt of invoice.**

Exclusions and Understandings

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement.

- Any items and/or scope not specifically listed in the proposal.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary, Colliers Engineering & Design may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees regarding the extra services.

Section II – Rate Schedule

Technical Staff Rates 2025	
Billing Titles	Hourly Rates
Executive Principal	360.00
Senior Principal	345.00
Principal	320.00
Senior Technical Director	295.00
Senior Project Manager	270.00
Technical Director	230.00
Project Manager	220.00
Senior Project Specialist	200.00
Project Specialist	190.00
Technical Professional	180.00
Technical Specialist	170.00
Specialist	160.00
Senior Data Technician	150.00
Senior Technical Assistant	140.00
Technical Assistant	125.00
Field Technician	115.00
Data Technician	115.00
Survey Crew – 1 Person w/Robotic Equipment	195.00
Additional Survey Crew Member	85.00
SUE Crew (designating) – 1 Person	160.00
Additional (designating) Member	85.00
SUE Crew (locating) – 2 Person	220.00
Additional (locating) Member	85.00
Expert Witness	425.00
Sr. LSRP	330.00
LSRP	290.00

Reimbursable Expenses	
General Expenses	Cost + 15%
Travel (Hotel, Airfare, Meals)	Cost + 15%
Sub-Consultants/Sub-Contractors	Cost + 20%
Plotting	4.50 / Each
Computer Mylars / Color Plots	100.00 / Each
Photocopies	0.19 / Each
Color Photocopies	2.05 / Each
Document Binding	4.05 / Each
Portable Media	100.00 / Each
Exhibit Lamination (24" x 36" or larger)	90.00 / Each
Initial Digital Signature	300.00
Additional Digital Signatures	75.00 / Each
Mileage Reimbursement*	0.655 / Per Mile
	Field Vehicle 0.75 / Per Mile

*Mileage reimbursement subject to change based upon IRS standard mileage rate.

Section III – Client Contract Authorization

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Signature

Date

Printed Name

Title

If you find this proposal acceptable, please sign where indicated above in Section III, and return one signed copy to this office. **Payment terms are NET30 of receipt of invoice.** This proposal is valid until (60 days per business terms).

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Sincerely,

Colliers Engineering & Design, Inc.



Bobby J. Torres, P.E.
Department Manager - Municipal

as

O:\Proposals\Municipal\Proposals\2025\06 - June\250618 - City of West Lake Hills - MS4 Program Support_25006568P .docx

Master Services Agreement Colliers



Proposed Work Orders

City Council Authorization:

- General Engineering Services, \$125,000
- Development Plan Review Services, \$150,000
- Street Maintenance, \$100,000

Administrative Authorization:

- MS4 Program Support, \$14,000
- Drainage Manual Review, \$4000





City of West Lake Hills City Council

AGENDA REPORT

Meeting Date:	<u>June 25, 2025</u>	Item Number:	<u>6</u>
Department:	<u>Administration</u>		
Prepared By:	<u>Trey Fletcher</u>	Cost / Budget:	<u>\$</u>
Exhibits:	<u>Master Services Agreement</u>	Source of Funds:	<u>Wastewater Fund</u>

Subject

Discuss and consider action on approval of a Master Professional Services Agreement for Wastewater Engineering Services with HR Green and Work Order Number 1 and authorizing the City Administrator to execute related documents.

Recommendation

Approval.

Discussion

City Engineering services have historically been provided by a consultant and a critical role in the operation of the city. A request for qualifications was issued in February 2025. City Council approved the selection of HR Green on April 9 to address the city's wastewater collection system.

This item is to request approval of a Master Services Agreement and Work Order Number One. Central to HR Green's scope will be to fulfill the City of Austin's request of the City to provide wastewater flows for average dry weather flow (ADF) and peak wet weather flow (PWF) in 5-year projection intervals over the next 30 years by March 2026. This information is to be applied by COA to plan for future infrastructure improvement projects for potential additional wastewater collection service to the City.

Work order proposals of \$50,000 or more will be subject to approval by the City Council. Proposals for less than \$50,000 are subject to approval by the City Administrator. Such approvals or amendments will be reported to the City Council.



City of West Lake Hills
911 Westlake Drive
West Lake Hills, Texas 78746

**STANDARD FORM OF AGREEMENT
MASTER PROFESSIONAL SERVICES**

**CITY ENGINEERING SERVICES
AND
ON-CALL CIVIL ENGINEERING SERVICES**

MASTER PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____
RFQ Issued February 14, 2025

This MASTER PROFESSIONAL SERVICES AGREEMENT ("Agreement") is between the **City of West Lake Hills**, a Texas Type A general law municipal corporation, (the "City") and _____, a _____ (the "Consultant"). City and Consultant are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH

WHEREAS, City desires Consultant to provide on-call professional engineer services for various civil projects in the City ("Services") as described in the RFQ issued February 14, 2025; and

WHEREAS, City desires to engage Consultant to perform the Services; and

WHEREAS, Consultant represents that it is qualified and desires to perform such Services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1 Consultant agrees to perform Services related to _____ as are requested from time to time by City, which Services shall be set forth more particularly in Work Orders, , issued from time to time by City and accepted by Consultant.

1.2 Work Orders shall contain the schedule, and price applicable to the Services within the scope of such orders. Work Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of Consultant, returned to City and countersigned by City. The specific terms of a Work Order may not be modified unless such modifications are agreed to in writing by City and Consultant. The Consultant shall review the Work Order, prepare a cost estimate to complete the Scope of Work, agree to an estimated schedule for performance, and return the Work Order for City's authorization. Upon receipt of City's written acceptance. The Consultant shall commence the Work as detailed on the Work Order.

1.3 All Work Orders incorporate and shall be governed by and subject to the terms, conditions, and other provisions of this Agreement; provided, however, that a Work Order may specifically state a term, condition, or other provision of this Agreement that is being modified thereby. Unless so stated, the terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated into a Work Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the balance of the terms, conditions, and other

provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate City to issue, or Consultant to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of them, from entering into agreements other than this Agreement for professional services or other work.

1.5 Consultant agrees to execute any and all certificates and/or documents as may reasonably be required by City, provided same is not in conflict with this Contract, unless excepted by Consultant in writing.

1.6 The Consultant shall designate a principal of the firm who shall, for so long as acceptable to the City, oversee Consultant's Services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Agreement. Any replacement of that principal shall be reviewed by the City prior to replacement. Consultant shall designate a full-time employee contact for each Work Order to act as the project Administrator (the "Consultant Project Administrator") issued by and under this Agreement for consultation throughout the Work Order. Any replacement of that Consultant Project Administrator shall be reviewed by the City prior to replacement.

1.7 Consultant shall be responsible for the coordination of its Services with those of its Subconsultant, the City, and the City's Consultants. Consultant shall be responsible for the completeness and accuracy of all Work Product submitted by or through Consultant and for its compliance with all applicable local, state and federal rules, regulations, ordinances and codes, life safety codes, building codes, zoning codes, and accessibility requirements and codes, including, but not limited to the provisions of the Americans with Disabilities Act, the *Texas Accessibility Standards of the Architectural Barriers Act* located at Chapter 469 of the Texas Government Code, the Federal Fair Housing Amendment Act, and all other regulatory requirements, laws, standards, codes and statutes related to the Services. Consultant may reasonably rely on City furnished information commensurate with professional standard of care. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

ARTICLE 2. TERM OF AGREEMENT

2.1 This Agreement shall be effective from the date first set forth above and shall continue without action by either Party for a term of three (3) years from the date first set forth above or through completion of the Work for all approved Work Order(s) unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing Paragraph 2.1, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as Consultant's obligations in connection with the Services under such Work Orders have been completed and fulfilled; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Work Order for cause and City shall have the right to terminate any Work Order for convenience.

2.3 Without limiting the generality of the foregoing Paragraph 2.2, Consultant's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration of termination of this Agreement or any Work Order.

ARTICLE 3. COMPENSATION AND PAYMENT

3.1 City agrees to pay Consultant, and Consultant agrees to accept, as full and complete compensation for Services properly performed by Consultant in accordance with this Agreement and applicable Work Order, the rates and charges agreed upon for a specific Work Order.

3.2 On or before the tenth day of each calendar month, Consultant shall submit an invoice to City, together with backup documentation required by City and releases and waivers in forms acceptable to City, covering all Services performed under any Work Order by Consultant and its subconsultants, subcontractors and suppliers during the preceding calendar month. Consultant shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested pursuant to each such Work Order, (iv) the amount previously paid pursuant to each such Work Order, (v) descriptions of Services performed during the prior month pursuant to each such Work Order, and (vi) the total payment requested by such invoice. Pursuant to The Texas Prompt Pay Act (Texas Government Code 2251.021) payments terms are NET thirty (30) days from date of invoice. If City objects to all or any portion of an invoice, it will notify Consultant of the same within twenty-one (21) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the Parties shall make every effort to settle the disputed portion of the invoice. Interests and Consultant's right to suspend performance will be governed by Texas Prompt Pay Act.

3.3 City shall have the right but not the obligation to withhold all or any part of payment requested in any invoice because of:

- (a) services that are not in compliance with this Agreement or the applicable Work Order or any failure of Consultant to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;
- (b) liens arising out of Services performed for which Consultant is responsible pursuant to this Agreement and asserted or filed against City or any of its property or portion thereof or improvements thereon provided that Consultant fails to provide City with sufficient evidence that Consultant's insurance is adequate or shall cover the claim(s);
- (c) Consultant's failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by Consultant or any of its subcontractors, subconsultants, or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or
- (d) any failure of Consultant to pay any subcontractor, subconsultant, or supplier of Consultant the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. Consultant will not include in its billings to City any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

Any failure by City to exercise its right to withhold all or any part of payment requested in any invoice as provided in this Paragraph 3.3 shall not be and shall not be construed as (i) a waiver of City's right to do so in the future, or (ii) evidence that any of the circumstances identified in Subparagraphs 3.3(a) through (d) above have not occurred.

3.4 Consultant agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from City, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by Consultant out of such payment made to Consultant by City. Provided that City is not in breach of its payment obligations hereunder, Consultant shall ensure that the Project site remains free from all liens and claims by its consultants. If City receives notice of a lien claim, or a claim for non-payment, from any of Subconsultants, City may, in its sole discretion, directly pay any such Subconsultant. If City pays the Subconsultant, the amount paid for the claim and any expenses, including reasonable attorneys' fees, incurred by City shall be deducted from Consultant's next payment. Further, provided that City has paid Consultant in accordance with the terms of this Agreement and any particular Work Order, CONSULTANT SHALL INDEMNIFY CITY FROM AND AGAINST ANY LIABILITY FOR PAYMENT ASSERTED OR FILED BY ANY SUCH PERSON OR ENTITY AGAINST CITY, THE PROJECT OR CONSULTANT.

ARTICLE 4. STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; LEGAL COMPLIANCE; THIRD PARTY REVIEW

4.1 Pursuant to Texas Local Government Code § 271.904(d), Consultant shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineers (collectively, the Consultant's "Standard of Care").

4.2 Consistent with its Standard of Care, Consultant shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep City apprised of the status of Services, coordinate its activities with City, and accommodate other activities of City at sites that Services impact. Consultant shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 Consultant shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while performing Services. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons. Provided however, that to the extent such Work Order or Services are to be performed for or on an active construction project, construction contractors of City shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all persons, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with City. Without assuming any control over, responsibility for or liability whatsoever with respect to the construction contractor obligations of the foregoing sentence, Consultant shall notify City if it observes violations of safety regulations or ordinances or quality of work deficiencies by City's construction contractors to the extent Consultant becomes actually aware of same or Consultant should have known if practicing Consultant's Standard of Care. Consultant shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that Consultant provides to City any estimate of costs associated with construction, any such estimate shall be developed in accordance with Consultant's Standard of Care, but it is recognized by the Parties that neither Consultant nor City has control over the cost of the labor, materials, or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from City's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by Consultant.

4.5 Consultant hereby agrees that the following terms, conditions, verifications, certifications, and representations apply to and are incorporated into this Agreement for all purposes:

- (a) With respect to providing Services hereunder, Consultant shall comply with any applicable Equal Employment Opportunity and/or Affirmative Action ordinances, rules, or regulations during the term of this Agreement.
- (b) Pursuant to Texas Local Government Code Chapter 176, Consultant shall submit a signed Texas Ethics Commission ("TEC") Conflict of Interest Questionnaire ("CIQ") at the time Consultant submits this signed Agreement to City. TEC Form CIQ and information related to same may be obtained from TEC website by visiting <https://www.ethics.state.tx.us/forms/conflict/>. If Consultant certifies that there are no Conflicts of Interest, Consultant shall indicate so by writing name of Consultant's firm and "No Conflicts" on the TEC Form CIQ.
- (c) If Consultant is a privately held entity, then pursuant to Texas Government Code Section 2252.908 and the rules promulgated thereunder by the TEC, Consultant shall submit a completed and signed TEC Form 1295 with a certificate number assigned by the TEC to City at the time Consultant submits this signed Agreement to City. TEC Form 1295 and information related to same may be obtained from TEC website by visiting <https://www.ethics.state.tx.us/filinginfo/1295/>. Consultant agrees and acknowledges that this Agreement shall be of no force and effect unless and until Consultant has submitted said form to City, if and to the extent such form is required under Government Code § 2252.908 and the rules promulgated thereunder by the TEC.
- (d) As required by Chapter 2271, Texas Government Code, Consultant hereby verifies that Consultant, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott Israel and will not boycott Israel through the term of this Agreement. The term "boycott Israel" in this paragraph has the meaning assigned to such term in Section 808.001 of the Texas Government Code, as amended.
- (e) Pursuant to Chapter 2252, Texas Government Code, Consultant represents and certifies that, at the time of execution of this Agreement, neither Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is engaged in business with Iran, Sudan, or any terrorist organization, and is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.
- (f) As required by Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, Consultant hereby verifies that Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott energy companies, and will not boycott energy companies during the term of this Agreement. The term "boycott energy companies" in this paragraph shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code, as amended.

- (g) As required by Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), as amended, Consultant hereby verifies that Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The term "discriminate against a firearm entity or trade association" in this paragraph shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19), as amended.
- (h) Pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature, Regular Session), as amended, and to the extent this Agreement grants to Consultant direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, Consultant verifies that neither Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, nor any of its sub-contractors are: (i) owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) 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; or (ii) headquartered in China, Iran, North Korea, Russia or a designated country. The term "designated country" in this paragraph means a country designated by the Governor as a threat to critical infrastructure under Section 2274.0103, Texas Government Code. The term "critical infrastructure" in this paragraph shall have the meaning assigned to such term in Section 2274.0101, Texas Government Code.

4.6 Consultant acknowledges and agrees that projects of City may be subject to review and approval by other third parties. Accordingly, as and when requested by City, Consultant shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 Consultant does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If City reuses any Work Product without Consultant's specific written verification or adaptation, such reuse will be at the risk of City, without liability to Consultant.

4.8 Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

4.9 Conflicts of Interest Prohibited. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement or any Work Order. If Consultant maintains or acquires a conflicting interest, any contract or Work Order with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City. The Consultant shall take appropriate steps to ensure that neither the Consultant nor any Staff is placed in a position where, in the reasonable opinion of the City, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the City under the provisions of the Agreement. The Consultant will disclose to the Authority full particulars of any such conflict of interest which may arise. By means of example only, and not limitation, it shall be a potential conflict of interest if Consultant provides plan review services on any land development, where Consultant has been involved in the preparation of the current or prior plan proposed to be developed in the City to ensure that such conform to codes adopted by the City; or has been involved in the preparation of a plan adjacent or abutting a development for which the City has requested Plan Review Services.

- (a) Notice of Potential Conflict. Consultant shall notify City in writing prior to accepting any Work Order, or beginning Services on any assignment or task under a Work Order for which Consultant believes there is or may be an actual or potential conflict of interest due to Engineer's professional services to third parties. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the City in writing of such conflict. The Consultant shall not receive any compensation, and Consultant waives the same, in connection with any work, Services or other activities of the Consultant for Service provided where a conflict of interest exists, unless notice is provided as required herein. As used herein a conflict of interest.
- (b) Termination for Material Conflict. If, in the reasonable judgment of the City after receiving notice required in 4.9.1 or otherwise, such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the City may terminate the Agreement for convenience immediately upon written notice to Consultant; such termination of the Agreement or any Work Order shall be effective upon the receipt of such notice by Consultant.

4.10 Minimize Interruption. It should be understood that City's wastewater collection and Water Control Improvement District 10's (the "District") water distribution systems must function during the Agreement period with a minimum of inconvenience to City or the District and its customers. Requirements of the Texas Commission on Environmental Quality (TCEQ) and the State and federal regulatory agencies having jurisdiction over the Project site, must be met by Consultant. It is therefore incumbent on Consultant to plan ahead in design and Services on the basis of integrating any demolition, installation, construction and implementation program as far as possible into the normal operating sequence of the various utility systems to avoid or minimize disruption of services. No departure from the normal operating sequence of the utility systems will be allowed, except with the specific advanced written agreement of City, District,

and Consultant's design specifications and drawings should include provisions requiring the same.

ARTICLE 5. COST RECORDS

5.1 Consultant shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by Consultant under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, Consultant shall maintain records of direct costs for which City is charged. City shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. City's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third-party charges only. Except to the extent audit rights are granted to City by applicable law, City shall have no audit rights with respect to the portion of Work Orders or Services compensated on a lump sum basis.

ARTICLE 6. OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All original studies, plans, deliverables, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by Consultant, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of City are and shall become City's property after completion of Consultant's services and payment in full of all monies due under the applicable Work Order (collectively, "Work Product"); provided, however, that Work Product shall not include pre-existing proprietary information of Consultant, its subconsultants, subcontractors, and/or suppliers ("Consultant Proprietary Information"). To this end, Consultant agrees to and does hereby assign, grant, transfer, and convey to City, its successors and assigns, Consultant's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. Consultant confirms that City and its successors and assigns shall own Consultant's right, title and interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, Consultant hereby grants City a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, create derivative works from and distribute to third parties Consultant Proprietary Information in connection with City's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of City or otherwise in connection with property or projects in which City has an interest (whether by City or a third party). Consultant shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its subconsultants, subcontractors, and suppliers. Work Product is to be used by Consultant only with respect to the Project in connection with which such Work Product was created and is not to be used on any other project. Consultant and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective

agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of City's copyright or other reserved rights. Consultant agrees that all Work Product will be maintained according to the provisions of the Public Information Act, Chapter 552, Texas Government Code, and the Local Government Records Act, Chapters 201 through 205, Texas Local Government Code, each as amended. Consultant shall deliver all copies of the Work Product to City upon the earliest to occur of City's request, completion of Services in connection with which Work Product was created, or termination of this Agreement. Consultant is entitled to retain copies of Work Product for its permanent Project records.

6.2 Consultant agrees that all information provided by City in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used, or disclosed by Consultant without the prior written consent of City, except as may be necessary for Consultant to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (a) was at the time of receipt by Consultant otherwise known by Consultant by proper means;
- (b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to Consultant;
- (c) subsequently is developed independently by Consultant, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of Consultant's being a Party to this Agreement;
- (d) becomes known or available to Consultant from a source other than City and without breach of this Agreement by Consultant or any other impropriety of Consultant;
- (e) enters the public domain without breach of the Agreement by or other impropriety of Consultant;
- (f) becomes available to Consultant by inspection or analysis of products available in the market;
- (g) is disclosed with the prior written approval of City;
- (h) with the exception of trade secrets, was exchanged between City and Consultant and ten (10) years have subsequently elapsed since such exchange; or
- (i) is disclosed to comply with the Texas Public Information Act ("TPIA") or in response to a court order to comply with the requirement of a government agency.

6.3 Consultant shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as Consultant normally takes to preserve and safeguard its own proprietary or confidential information.

6.4 Consultant will advise City of any patents or proprietary rights and any royalties, licenses, or other charges which Consultant knows or should know in the exercise of its Standard of Care impacts any design provided by Consultant in connection with any Services and obtain City's prior written approval before proceeding with such Services. Consultant shall not perform patent searches or evaluation of claims, but will assist City in this regard if requested, pursuant to a written change order in accordance with Paragraph 12.1, below. There will be no charge for Consultant's existing patents.

6.5 Public Records. Notwithstanding any provisions of the Agreement to the contrary, Consultant understands that the City will comply with the Texas Public Information Act, Tex. Gov't. Code Ann. § 552.001 et seq., as amended. If contacted by the City, Consultant will cooperate with the City in the production of records responsive to the request. Consultant agrees to provide the records responsive to the request in the format and within the time frame specified by the City. Consultant may request that City seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by the City in its sole discretion to comply with the legal requirements of the TPIA. Additionally, Consultant will notify the City's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with the Agreement and/or any amendment to the Agreement. The Agreement and/or any amendment to the Agreement and all data and other information generated or otherwise obtained in its performance is subject to the TPIA. Consultant agrees to maintain the confidentiality of information received from the City during the performance of the Agreement, including information that contains personal identifying information and/or sensitive personal information as defined by the Texas Identity Theft Protection Act, Chapter 521, Texas Business and Commerce Code. Furthermore, Consultant is required to make any information created or exchanged with the State pursuant to the Agreement, and not otherwise excepted from disclosure under the TPIA, available in a format that is accessible by the public, as specified by the City, at no additional charge to the City. Notwithstanding the foregoing, City acknowledges that one or more of Consultant's affiliates is a registered investment adviser and that Consultant may be subject to routine examinations, investigations, regulatory sweeps or other regulatory inquiries by applicable regulatory and self-regulatory authorities. City agrees that Consultant may make such disclosures as may be requested by any such authority (or examiner thereof) and will not be required to comply with the process described in this paragraph; provided that if the request by such authority (or examiner thereof) is specifically targeted at City, Consultant will notify City (to the extent not prohibited by such authority or examiner or by applicable rule, regulation or law) as promptly as practicable following such request. City acknowledges that Consultant's review of the Confidential Information will inevitably enhance Consultant's knowledge and understanding of City's business in a way that cannot be separated from Consultant's other knowledge, and City agrees that this Agreement shall not restrict Consultant in connection with the purchase, sale, consideration of, and decisions related to other investments.

ARTICLE 7. INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, Consultant shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. Consultant shall not be considered a partner, affiliate, agent, or employee of City and shall in no way have any authority to bind City to any obligation.

ARTICLE 8. RE-PERFORMANCE

8.1 If any Services are not performed in accordance with Consultant's Standard of Care, Consultant shall re-perform Services that do not meet Standard of Care at its own expense with reasonable expediency consistent with sound professional practices.

8.2 The representations and warranties of Consultant under this Agreement and Work Orders are made in lieu of any other warranties or guarantees and Consultant makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and Consultant shall have no liability to City based upon any theory of liability that any such other warranty was made or breached.

ARTICLE 9. INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY AND EACH OF ITS COUNCIL MEMBERS, OFFICIALS, OFFICERS, AND EMPLOYEES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "CITY INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST ALL THIRD-PARTY CLAIMS, DAMAGES, LIABILITIES, COSTS, , INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COURT COSTS:

- (a) DUE TO THE VIOLATION OF ANY APPLICABLE ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT WITH CONSULTANT OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;**
- (b) CAUSED BY OR RESULTING FROM ANY NEGLIGENT ACT, OMISSION, OR FAILURE TO ACT IN VIOLATION OF CONSULTANT'S STANDARD OF CARE, BY CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT WITH CONSULTANT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;**
- (c) CAUSED BY OR RESULTING FROM ANY CONSULTANT'S INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;**
- (d) DUE TO THE FAILURE OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT WITH CONSULTANT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL TO PAY ITS CONSULTANTS OR**

SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR

- (e) OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH DAMAGES, LIABILITIES, COSTS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF THIRD-PARTY TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH DAMAGES, COSTS ARE CAUSED BY ANY NEGLIGENT OR INTENTIONALLY TORTIOUS ACTS OR OMISSIONS OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER AGREEMENT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL.**

NOTHING CONTAINED IN THIS SECTION 9.1 SHOULD BE CONSTRUED TO REQUIRE CONSULTANT TO INDEMNIFY OR HOLD HARMLESS CITY OR ANY INDEMNITEES FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY OR INDEMNITEES SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B)). NOTHING IN THIS ARTICLE 9 IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS REQUIRED UNDER ARTICLE 11 HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, CONSULTANT SHALL, UPON FINAL ADJUDICATION OF THE DAMAGES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEYS' FEES INCURRED TO DEFEND AGAINST THE DAMAGES IN PROPORTION TO CONSULTANT'S LIABILITY TO ANY THIRD PARTY FOR SUCH DAMAGE.

9.3 Consultant shall procure liability insurance covering its obligations under this section.

9.4 It is mutually understood and agreed that the indemnification provided for in this section 9 shall indefinitely survive any expiration, completion or termination of this Agreement. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

9.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Section 9.1, and any Additional Insured requirements under Article 11, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE 10. LIMITATION OF LIABILITY

10.1 SUBJECT TO 10.2, BELOW, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE OR ANY OTHER INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A PARTY, WHETHER ACTIVE OR PASSIVE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

10.2 EXCLUSIONS FROM WAIVER. NOTWITHSTANDING ANYTHING CONTAINED IN SECTION 10.1 ABOVE, CITY AND CONSULTANT MUTUALLY AGREE THAT THE FOLLOWING LIABILITIES, OBLIGATIONS AND DAMAGES ARE SPECIFICALLY EXCLUDED FROM ANY WAIVER OF CONSEQUENTIAL DAMAGES SET FORTH IN SECTION 10.1:

- (a) A PARTY'S WAIVER IN SECTION 10.1 WILL NOT APPLY TO THE EXTENT ITS EFFECT WOULD BE TO LIMIT THE OBLIGATION OF AN INSURER TO PAY INSURANCE PROCEEDS THAT WOULD, BUT FOR THE OPERATION OF SUCH WAIVER, BE PAYABLE BY THAT INSURER; PROVIDED HOWEVER, THAT SUCH POLICY PROCEEDS SHALL BE LIMITED TO THE AMOUNT DESCRIBED AS MINIMUM LIMITS IN SECTION 11 FOR THE PARTICULAR POLICY;**
- (b) ANY DIRECT OR "NON-CONSEQUENTIAL" DAMAGE(S) INCURRED BY OWNER OR CONSULTANT;**
- (c) COSTS OF CORRECTIVE OR COMPLETION WORK CAUSED BY OR RESULTING FROM THE CONSULTANT'S FAILURE TO COMPLY WITH THE REQUIREMENTS IMPOSED ON THE CONSULTANT BY THIS AGREEMENT OR ANY WORK ORDERS ISSUED THEREUNDER;**
- (d) FINES AND PENALTIES LEVIED BY A REGULATORY AGENCY;**
- (e) GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CONSULTANT OR ITS SUBCONSULTANTS, THEIR EMPLOYEES OR ANY FOR WHOM THEY ARE RESPONSIBLE.**

10.3 THE PARTIES AGREE THAT NEITHER PARTY'S INDIVIDUAL EMPLOYEES, OFFICERS, ELECTED OFFICIALS, DIRECTORS OR PRINCIPALS SHALL BE SUBJECT TO ANY PERSONAL LIABILITY AS A RESULT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY WORK ORDER FOR SERVICES HEREUNDER, EXCEPT AS REQUIRED UNDER THE TEXAS OCCUPATIONS CODE § 1051. IN CASES INVOLVING THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CITY'S, OR CONSULTANT'S EMPLOYEES, OFFICERS, DIRECTORS OR PRINCIPALS, THE FOREGOING LIMITATION SHALL NOT APPLY AND THE OTHER PARTY SHALL BE ENTITLED TO ALL AVAILABLE REMEDIES AT LAW OR IN EQUITY.

ARTICLE 11. INSURANCE

11.1 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subconsultants. The

policies, limits and endorsements required are as set forth below.

Each Subconsultant must provide Worker's Compensation/Employer's liability, Professional Liability, CGL, and Automobile Liability coverage with equal limits as Consultant; provided, however, the limits of such insurance may be adjusted in accordance with the nature of each Subconsultant's operations but, if such adjustment is requested, it must be submitted to City for approval before the Consultant enters into an agreement or any work commences under the agreement in question.

During the term of the Agreement Consultant's insurance policies shall meet the minimum requirements of this section.

11.2 Types. Consultant shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Workers Compensation/Employer's Liability
- (d) Professional Liability.

11.3 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, and employees. Any self-insurance or insurance policies maintained by the City, its officials, and employees, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Agreement shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement (attached hereto as "**Attachment C**" and incorporated by reference), and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

11.4 General Requirements Applicable to All Policies. The following General Requirements to all policies shall apply:

- (a) Only licensed insurance carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days prior written notice has been given to the City of West Lake Hills, with a (10) day exception for non-payment of premium.

- (e) The Certificates of Insurance shall be prepared and executed by the insurance carrier or its authorized agent on the most current State of Texas Department of Insurance-approved forms.
- (f) Additional Insured Status. To the fullest extent permitted under Texas law City, Indemnitees shall be included as additional insureds on each CGL policy procured by Consultants and Subconsultants using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations) or endorsements providing equivalent coverage. Such parties shall also be included as additional insureds on all other policies procured by Consultant and Subconsultants except Worker's Compensation/Employer's Liability and Professional Liability with endorsements approved by City. Notwithstanding anything to the contrary, such additional insured coverage shall not exceed that allowed under Texas law.

11.5 Commercial General Liability Requirements. The following Commercial General Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (d) The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability at least as broad as CG 00 01, and where exposures exist, Explosion Collapse and Underground coverage.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.6 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.7 Workers' Compensation/Employers Liability Insurance Requirements. The following Workers' Compensation Insurance requirements shall apply; and the term "contractor" shall be construed to mean "Consultant" as identified in this Agreement:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy; either directly through their employer's policy (the Consultant's, or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) The workers' compensation/employer's liability insurance shall include the following terms:
 - (1) Employer's Liability limits of \$1,000,000 for each accident is required.
 - (2) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:
 - (1) Definitions:
 - (i) Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the Project.
 - (ii) Duration of the Project - includes the time from the beginning of the work on the Project until the Consultant's/person's work on the project has been completed and accepted by the governmental entity.
 - (iii) Persons providing services on the project ("subcontractors" Tex. Lab. Code Ann. § 406.096) - includes all persons or entities performing all or part of the services the Agreement or has undertaken to perform on the

project, regardless of whether that person contracted directly with the Consultant and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, subconsultants, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (2) The Consultant shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Tex. Lab. Code Ann. § 401.011(44) for all employees of the Consultant providing services on the project, for the duration of the project.
- (3) The Consultant must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- (4) If the coverage period shown on the Consultant's current certificate of coverage ends during the duration of the Project, the Consultant must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- (5) The Consultant shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (i) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (ii) no later than seven calendar days after receipt by the Consultant, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (6) The Consultant shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (7) The Consultant shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Consultant knew or reasonably should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (8) The Consultant shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (9) The Consultant shall contractually require each person with whom it

contracts to provide services on a project, to:

- (i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Tex. Lab. Code Ann. § 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (ii) provide to the Consultant, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (iii) provide the Consultant, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (iv) obtain from each other person with whom it contracts, and provide to the Consultant:
 - (A) a certificate of coverage, prior to the other person beginning work on the project; and
 - (B) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (C) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (D) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or reasonably should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (E) Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
 - (F) By signing this Agreement, or providing, or causing to be provided a certificate of coverage, the Consultant is representing to the governmental entity that all employees of the Consultant who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal

penalties, civil penalties, or other civil actions.

- (G) The Consultant's failure to comply with any of these provisions is a breach of Contract by the Consultant that entitles the governmental entity to declare the Contract void if the Consultant does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

11.8 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum of \$2,000,000 per claim and \$5,000,000 aggregate, with a maximum deductible of \$350,000.00. Financial statements shall be furnished to the City of West Lake Hills when reasonably requested.
- (c) Professional liability coverage will be obtained and maintained by Consultant and Subconsultant with policy limits set forth above to insure from and against all negligent acts, errors, and omissions in the professional services performed by them, and their agents, representatives, employees, subcontractors, and subconsultants. Coverage shall provide full prior acts coverage or a retroactive date not later than the date the services are first performed in connection with the Project. Policies shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or Subconsultants; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) design services. All policies shall be maintained until all claims arising out of the services provided by each entity are barred by the statute of repose under Texas law. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE 12. CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 City may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. Such changes shall be authorized by written change order issued by City and accepted by Consultant. In the event that any such change, through no fault of Consultant, shall impact Consultant's compensation or schedule, then an equitable adjustment shall be made to the Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

12.2 City may for convenience terminate this Agreement, any Work Order issued under this Agreement, or Consultant's right to perform Services under this Agreement or any Work Order by at any time giving seven (7) days written notice of such termination. In such event City shall pay Consultant, as its sole and exclusive remedy, for Services properly performed to date of termination and for reasonable costs of closing out such Services provided City has pre-approved such costs. Consultant shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, Consultant shall invoice City for all services performed by Consultant prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by City and City's receipt of all Work Product. Consultant shall include a similar provision allowing for termination for convenience on similar terms in all its lower-tier subcontracts.

12.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that City terminates this Agreement or any Work Order for cause, Consultant shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to City's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, Consultant is declared in default and/or terminated by City under any Work Order with City, City shall have the right to offset and apply any amounts which might be owed to City by Consultant against any earned but unpaid amounts owed to Consultant by City under any Work Order. In the event any Work Order is terminated by City, Consultant shall promptly deliver to City all Work Product with respect to such terminated Work Order.

12.4 The City may, without cause, order the Consultant in writing to suspend, delay, or interrupt this Agreement or any Work Order in whole or in part for such period of time as the City may determine. Upon receipt of such notice, the Consultant shall, unless the notice requires otherwise, immediately discontinue Services on the date and to the extent specified in the notice. The Consultant shall be compensated for Services performed prior to notice of such suspension. When the services under this Contract are resumed, the Consultant shall be compensated for expenses directly and necessarily incurred in the interruption and resumption of the Consultant's services, without markup. If the Consultant's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Consultant may terminate this Agreement upon giving not less than five (5) calendar days' written notice to City.

12.5 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the Parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City:

Consultant:

City of West Lake Hills

Attn: City Administrator

Attn: _____

**911 Westlake Dr.
West Lake Hills, Texas 78746**

**(address)
(City, State, Zip)**

ARTICLE 13 FORCE MAJEURE

13.1 Any delay in performance or non-performance of any obligation of Consultant contained herein shall be excused to the extent such delay in performance or non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, pandemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the reasonable control of and cannot be reasonably anticipated by or the effects cannot be reasonably alleviated by Consultant and (ii) prevents the performance of Services.

13.2 If Consultant is affected by Force Majeure, Consultant shall promptly provide notice to City, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five (5) days after Consultant first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on Consultant's ability to communicate with City. Consultant shall use its commercially reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14. SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 City and Consultant bind themselves and their successors, executors, administrators and permitted assigns to the other Party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

14.2 No right or interest in this Agreement or any Work Order shall be assigned by Consultant or City without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Work Order with respect to which Consultant has elected to subcontract, Consultant will notify City in writing of the identity of the particular subcontractor, subconsultant or supplier Consultant intends to employ for the performance of such part of the Services and the scope of Services it will perform. City shall have the right within twenty-one (21) calendar days of such written notice to disallow Consultant's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by Consultant as a result of such disallowance shall be borne by City.

ARTICLE 15. SEVERABILITY; NON-WAIVER

15.1 If any provision or portion thereof of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect. The Parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the Parties.

15.2 Failure by either party in any instance to insist upon observance or performance of any term, condition or obligation of this Agreement shall not be deemed a waiver of any such observance or performance. No waiver of any term, condition, obligation or breach of this Agreement will be binding unless in writing, and then will be for the particular instance specified in such writing only. Payment of any sum by City to Consultant with knowledge of any breach will not be deemed a waiver of such breach or any other breach.

ARTICLE 16. LICENSE REQUIREMENTS

16.1 The Consultant and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Work Order.

ARTICLE 17. ENTIRE AGREEMENT

17.1 This Agreement and all Work Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties.

ARTICLE 18. GOVERNING LAW; VENUE

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles. Venue of all dispute resolution proceedings arising out of, connected with or relating to this Agreement, shall be in Travis County, Texas.

ARTICLE 19. DISPUTE RESOLUTION;

19.1 Each party to this Agreement is required to continue to perform its non-disputed obligations under this Agreement, pending a final resolution of any dispute arising out of or

relating to this Agreement, unless it would be impossible or impracticable to perform under the circumstances.

19.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Agreement agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

19.3 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

- (a) Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon the written agreement of both parties.
- (b) In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this Article 19 shall be deemed to have occurred.
- (c) The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Travis County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.
- (d) Consultant and City expressly agree that, in the event of litigation, both parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law or any other provision for payment of Attorneys' fees.
- (e) Notwithstanding the foregoing, in the event City and any other consultant and/or any contractor are involved in a dispute in connection with a project for which Consultant has provided Services, and City, in its sole discretion, determines that Consultant's participation in any dispute resolution meeting or mediation proceeding between City and any such consultant and/or contractor is necessary to the resolution of such dispute, Consultant agrees to attend and participate at its own cost in any such dispute resolution meeting or mediation proceeding.

19.4 Notwithstanding the foregoing, before bringing an action asserting a claim for a construction defect as provided by Tex. Gov't Code §§ 2272.001 et seq., as amended, City shall provide Consultant a written report by certified mail, return receipt requested, that clearly: identifies the specific construction defect on which the claim is based; describes the present physical condition of the affected structure; and describes any modification, maintenance, or repairs to the affected structure made by City or others since the affected structure was initially occupied or used. Not later than the five (5) days after the date Consultant receives a report under this section, Consultant must provide a copy of the report to each subcontractor/subconsultant retained on the construction of the affected structure whose work is subject to the claim.

19.5 Before bringing an action asserting a claim to which this chapter applies, City shall allow each party with under this Agreement with City is subject to the claim and any known subcontractor/subconsultant or supplier who is subject to the claim:

- (a) a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after sending the report required by section 19.4; and
- (b) at least 120 days after the inspection to:
 - (1) correct any construction defect or related condition identified in the report; or
 - (2) enter into a separate agreement with City to correct any construction defect or related condition identified in the report.
- (c) City is not required to allow a party to make a correction or repair under this section 19.5 if:
 - (1) the party:
 - (i) is a contractor and cannot provide payment and performance bonds to cover the corrective work;
 - (ii) cannot provide liability insurance or workers' compensation insurance;
 - (iii) has been previously terminated for cause by the City; or
 - (iv) has been convicted of a felony; or
 - (2) the City previously complied with the process required by Subsection (a) regarding a construction defect or related condition identified in the report and:
 - (i) the defect or condition was not corrected as required by Subsection (a)(2)(A) or an agreement under Subsection 19.5(b)(2) or
 - (ii) the attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

19.6 This Section 19.5 does not prohibit or limit the City from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public.

ARTICLE 20. ELECTRONIC SIGNATURES; COUNTERPARTS

20.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Duplicate copies of duly executed and delivered counterparts of this Agreement shall be deemed to have the same full force and effect as originals and may be relied upon as such. Notwithstanding the foregoing, the Parties agree that this Agreement and any Work Order may be executed using electronic signatures at the option and in the discretion of City, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of City regarding electronic signatures shall apply.

ARTICLE 21. PUBLICITY

21.1 Neither Consultant nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of City, unless such materials have first been reviewed and approved in writing by City. This provision shall not apply to mandatory reports which Consultant or its subconsultants are required by law to file with governmental authorities.

ARTICLE 22. GENERAL TERMS

22.1 Cumulative Mutual Remedies. In the event of default by a Party herein, the other Party shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret, or enforce, the terms of the Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

22.2 State or Federal Laws. This Contract is subject to all applicable federal and State laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, State or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

22.3 No Third-Party Beneficiary. The Parties are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year herein above first written.

CONSULTANT:

CITY:

Name

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

City of West Lake Hills

By: _____

Trey Fletcher

City Administrator

Date: _____

ATTEST:

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, City will compensate Consultant on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Work Order. Professional is defined as Administrator, supervisor, engineer, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

- X.XX for professional and non-professional staff working at Consultant or its subcontractor, subconsultant, or vendor offices.
- X.XX for professional and non-professional staff working in the field during construction or at City offices for a minimum period of six (6) consecutive months.
- X.XX for construction inspectors working in the field.

(b) EXPENSES

“Billable Expenses” include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). “Billable Expenses” include: subconsultants; travel expenses to and from locations outside Guadalupe and Bexar County; and copies of all deliverables submitted to City. All local vehicle use outside Guadalupe and Bexar Counties will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

City will compensate Consultant on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Work Order. City may ask Consultant for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary

breakdown showing the labor hours and cost, subconsultant costs, and other direct costs included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. Consultant will submit and City will pay monthly invoices based on the mutually agreed upon percentage of the Project completed.

ATTACHMENT B

This Work Order is issued subject to, is governed by and incorporates by reference that certain Master Professional Services Agreement, between the City and Consultant effective _____, 20__.

Work Order Date: _____

CONSULTANT: _____

Consultant Project Manager: _____

City Point of Contact: _____

Type of Compensation: _____

Compensation: _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: See Attached.

Agreed to by:

CITY:

CONSULTANT:

CITY OF WEST LAKE HILLS

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENT C
CERTIFICATE OF INSURANCE



PROFESSIONAL SERVICES SCOPE OF WORK

For

Wastewater Engineering Services

Trey Fletcher, AICP
City Administrator
City of West Lake Hills
911 Westlake Dr.
West Lake Hills, Texas 78746
512.327.3628
tfletcher@westlakehills.gov

Leigh Thomas, P.E., Regional Manager - Water
HR Green, Inc.
5508 Highway 290 West, Suite 150
Austin, Texas 78735

City of West Lake Hills Contract No.:
HR Green Project No: 250221

June 20, 2025

TABLE OF CONTENTS

1.0	PROJECT UNDERSTANDING
2.0	SCOPE OF SERVICES
3.0	DELIVERABLES AND SCHEDULES INCLUDED IN THIS AGREEMENT
4.0	ITEMS NOT INCLUDED IN AGREEMENT/SUPPLEMENTAL SERVICES
5.0	SERVICES BY OTHERS
6.0	CLIENT RESPONSIBILITIES
7.0	PROFESSIONAL SERVICES FEE

1.0 Project Understanding

1.1 General Understanding

The City of West Lake Hills wastewater collection system is a combination of gravity and low-pressure systems, in addition to existing septic systems serving its resident's sewage management needs. The wastewater collection system discharges to the City of Austin/Austin Water Utility (AWU) wastewater collection system through multiple entry points. Each of these entry points, and the system as whole, have defined average and peak flow limitations defined in an agreement and subsequent amendments between the COA and WLHs (last amendment dated August 28, 2012). The COA has requested that the City provide wastewater flows for average dry weather flow (ADF) and peak wet weather flow (PWF) in 5-year projection intervals over the next 30 years by March 2026. This information is to be applied by COA to plan for future infrastructure improvement projects for potential additional wastewater collection service to the City.

The City owns and operates (operated by contract operations with Crossroads) the wastewater collection system that serves customers connected to the gravity system either through a gravity service connection or grinder pump. This includes gravity and force main piping and lift station facilities. Customers not currently served by a gravity option have onsite septic and drain field systems that must be maintained on a schedule (by City ordinance) as it pertains to whether the systems are located over the Edwards Aquifer Recharge Zone (EARZ) as regulated by Texas Commission on Environmental Quality (TCEQ). In addition, new developments and re-developments are ongoing and there is a need to evaluate wastewater feasible options (septic to gravity where feasible).

The scope of services outlined in this professional services agreement includes general wastewater systems including:

- 1) General wastewater engineering advisory services pertaining to existing and projected development/re-development wastewater systems within the City of West Lake Hills.
- 2) Wastewater system capacity analysis to evaluate how existing system needs and projected development/re-development needs can be achieved.

Calculations and analysis will be performed in accordance with TAC Title 30 Chapter 217 – Design Criteria for Domestic Wastewater Systems, as regulated by TCEQ and standard industry equations.

1.2 Design Criteria/Assumptions

Professional services and evaluation performed in accordance with general industry sewage septic systems, low pressure and gravity wastewater collection analysis standards and methods and TAC Title 30 Chapter 217.

2.0 Scope of Services

Task 1000 – Project Management, Status Reporting & Invoicing

This task consists of general project administration, supervision and management, and scheduling of field tasks. It also includes the quality assurance/control of all engineering and fieldwork, data management and security, data collection activities, engineering evaluations, and recommendations for improvements. COMPANY will prepare and submit monthly invoices for approval and will be responsible for providing management, supervision, and coordination of all engineering and field tasks as well as indicated project task deliverables as part of this effort. Project management duration is assumed to be 12 months

Task 2000 – Project Meetings

This task provides for project meetings to exchange information with the CLIENT Project Team and provide status updates. COMPANY will provide all meeting agendas, handouts, presentation materials and minutes. Project status meeting may also include presentations regarding the project to Client staff, other and council, and the public at the discretion of the CLIENT's Project Team. A maximum of 12 monthly project meetings, and a maximum of 6 status meetings is assumed.

Task 3000 – General Wastewater Advisory, Review, and Mapping Services:

This task consists of general wastewater engineering advisory and review services. This list is intended to cover areas in which COMPANY could provide support to CLIENT in advising on matters related to wastewater infrastructure. The level of effort required for advisory services is estimated for the purposes of the development of a scope and fee and will vary based upon services requested by CLIENT and provided by the COMPANY.

- Assist the City in coordination and communications with wastewater customers.
- Attend meetings with the City representatives as it pertains to wastewater infrastructure. A maximum of 12 meetings is assumed.
- Review information provided development/re-development as it pertains to existing wastewater infrastructure.
- Advise the City on proposed improvements to wastewater infrastructure.
- Evaluate and report to the City findings from review of information provided pertaining to wastewater infrastructure.
- Provide engineering analysis services as it pertains to wastewater infrastructure based upon data and information provided and report findings to the City.
- Perform engineering calculations as it pertains to wastewater infrastructure and related information provided, and report findings to the City.
- Provide engineering plan review services for planned wastewater infrastructure in accordance with local, state, and federal requirements and report findings to the City.
- General Regulatory Guidance and Assistance: Provide guidance to the City as it pertains to published regulatory requirements for the City of West Lake Hills, Texas Commission on Environmental Quality (TCEQ), and the Environmental Protection Agency (EPA), as related to wastewater infrastructure.
- Geographic Information Systems (GIS) and Mapping Related support, including the review, update, development and application of shapefiles for wastewater infrastructure based upon information provided.

Task 4000 – System Inventory and Data Management

This task consists of:

- Utilizing the CLIENT provided existing GIS data for the wastewater collection systems, parcel data, and re-development/development areas.
- Reviewing CLIENT provided project data, including existing plans, water use data, system data, population projections and re-development (known), and all other relevant data to the wastewater systems (all City residents).
- Collecting any CLIENT provided condition assessment data on the wastewater systems (gravity, low-pressure, septic).
- Reviewing CLIENT provided maintenance records, work orders, and regulatory (TCEQ) reports available as it pertains to the wastewater systems.
- Obtaining from the CLIENT model files (in original format), data applied in model, associated calculations and analysis, and all available reports completed by others.
- Implementing data structure, verification, and management procedures.

Files will be reviewed and additional system information needs identified. Information will be received from the CLIENT and/or its contractors where available. The following is a list of data to be received from the CLIENT and/or its contractors, but is not limited to nor meant to serve as an inclusive list:

- Consumption (water) Demand Meter Data for the period three years, during winter averaging months, in electronic format.
- Customer list, in electronic format by address, of all gravity system connections.
- Customer list, in electronic format by address, of all grinder pump to gravity system connections.
- Resident list, as it correlates to water customer data, in electronic format, for all existing septic systems (non-wastewater customers).
- Wastewater collection system meter data (point of discharge to COA – as billed by COA).
- Verification of each point of connection to COA gravity wastewater system (identify manhole and lift station and correlate to GIS data).
- Wastewater gravity system maintenance and operations information.
- Wastewater low pressure (grinder pump) maintenance and operations information.
- Wastewater Lift Station Facilities – Plans (if available), wet well dimensions, operating levels, number of pumps and pump rating with pump curves if available or a manufacturer nameplate if not; available flow data and SCADA logs for daily rates.
- Low pressure (grinder pump) operations information (manufacturer data sheets and pump curves)

Data not available and required for the analysis shall be developed from other sources, including record drawings, county records, regional planning authorities, utility billing systems, field investigation or engineering judgement, as applicable.

Task 5000 - Wastewater Systems Capacity Analysis

This task consists of developing existing wastewater flows (gravity, low pressure), projected re-development/development areas, and the potential septic to gravity conversion flows from CLIENT provided data and information. COMPANY will evaluate existing, projected, and potential wastewater flows from the most current and available data to be applied in initial system capacity analysis and applied in Task 6000 – Wastewater Hydraulic Modeling.

Base (Dry Weather) Flows

Use the following sources to determine the current dry-weather base flows in the collection system as provided by the CLIENT or its contractors.

- CLIENT water accounts with addresses or geo-references if available
- 3-month winter average water use by utility account from the CLIENT
- Flow monitoring data collected from existing meters in the system (existing point of connection to COA), if available.

Per-Connection Flow Rates

- Analyze 3-month winter average water use to determine “representative” dry weather wastewater demands for typical customer types (single-family residential, commercial, etc.). CLIENT to provide water meter data in a digital format with street address, metered use, and customer type.
- Develop wastewater flow projections for existing gravity and low-pressure connections.
- Estimate wastewater flow projections for septic systems.

Wet Weather Flow Rates (based on available system data and assumptions)

- Apply an assumed Rain Induced Inflow & Infiltration (RDII) factor for existing areas of the wastewater collection system impacted by projected development to estimate inflow & infiltration in accordance with TCEQ Chapter 217 and industry standards.

The data and resultant calculations will be used to analyze the existing system’s operational performance based on three years of winter average meter demand data. Projected conversion from septic to gravity wastewater flows will be evaluated based upon the data provided by the CLIENT in Task 2000 and applied in calculations for this task. System capacity performance will be evaluated in accordance with TCEQ and industry applicable standards. The analysis will include evaluating:

- Average Dry Weather Flow (ADF) – existing gravity system (gravity and low-pressure systems).
- Peak Wet Weather Flow (PWF) – existing system (gravity and low-pressure systems).
- Average Dry Weather Flow (ADF) –projected septic addition.
- Peak Wet Weather Flow (PWF) –projected septic addition.
- Average Wet Weather Flow (AWF) – existing system and with projected re-development.
- Peak Wet Weather Flow (PWF) – existing system and with projected re-development.

Lift Station Draw Down Testing

This task provides for the performance of lift station of draw down tests to provide specific information regarding the operational characteristics of the lift stations within the wastewater collection system. Draw down testing will be performed by CLIENT operations personnel with COMPANY representatives providing the testing protocol and collecting the resultant data while onsite. It is assumed all draw down testing for four (4) lift stations will be performed in one eight-hour day. The draw down test data collected will be applied in the lift station flow analysis conducted for each lift station monitored. The following information will be collected as a function of the testing, dependent upon station configuration.

- Lift station pump configuration
- Performance of pump draw-down tests and/or other tests to determine the specific characteristics of the lift station pumps
- Determination of wet well measurements

This task does not include gravity wastewater system or lift station flow monitoring, nor rainfall monitoring, to collect actual wastewater collection system flows and local rainfall rates. Flow and rainfall monitoring services and resultant capacity analysis can be negotiated at the request of the CLIENT.

Task 6000 –Wastewater Hydraulic Modeling

Hydraulic Model Development

- Confirm collection system connectivity and invert and rim elevations for model based on exiting information provided by Client.
- Develop drainage area characteristics for each tributary sub-basin using GIS information for existing and future land use, Census (tract, block and block group level), population and land use projections, zoning, structures, and current load allocation for the existing model, including existing sewer basins and sub-basins.
- Allocate Dry Weather Flow (DWF) loading from ADF estimates in Task 5000 – Wastewater Systems Capacity Analysis and other available flow records.
- Lift Stations will be assessed for inclusion in the hydraulic model. Lift stations shall be modeled by appropriate method if determined to be necessary for the model based on purpose, configuration and capacity of the lift station.
- Prepare a model schematic describing the configuration and including unique designations for each modeled component.

Calibrate Hydraulic Model

- Dry Weather Flow Calibration - Utilizing data and calculations/estimations in Task 5000 – Wastewater Systems Capacity Analysis and any existing system flow information that can be validated.
- Wet Weather Flow (WWF) Calibration - Utilizing data utilizing data and calculations/estimates in Task 5000 – Wastewater Systems Capacity Analysis and any existing system flow information that can be validated,
- Calibration is limited to existing condition flows not including field studies.

Perform Hydraulic Analysis and Recommendations

- Capacity Analysis

- Apply the model to determine if any bottleneck conditions exist during dry weather flow conditions.
 - Develop future flows using population and land use projections to prepare model input describing both existing and future flow conditions.
 - Run model for existing conditions and future conditions, without improvements.
 - Verify and revise, if necessary, basic collection system planning assumptions.
- Develop system improvements and resultant recommendations from capacity analysis and modeled results.

This task does not include gravity wastewater system or lift station flow monitoring, nor rainfall monitoring, to collect actual wastewater collection system flows and local rainfall rates. Flow and rainfall monitoring services and resultant hydraulic analysis can be negotiated at the request of the CLIENT.

Task 7000 –Wastewater Systems Capacity Analysis Reporting

The final deliverable shall be organized to generally adhere to the table of contents that is provided below:

1. Summary
2. Introduction
 - a. Purpose
 - b. Report Organization
3. Data Collection, Structure, and Management
 - a. Data Collection, Review / Existing Data / Information
 - b. Existing Wastewater System Inventory
4. System Population & Flow Projections
 - a. City Population Projections
 - b. Historical City Flow Data
 - c. City and Regional Flow Projections
 - d. Flow Usage
5. Wastewater System Modeling
 - a. Mapping
 - b. Hydraulic Model Development
 - c. Model Calibration
 - d. Hydraulic Capacity Analysis
 - e. Hydraulic Modeling Scenarios
6. Findings and Recommendations
 - a. Summary of Findings
 - b. Current and Future System Needs
 - c. Phasing Planning
 - d. Implementation Schedule

A draft deliverable will be provided to City staff for review and approval. All data and conclusions presented in the draft deliverable will subject to finalization based on comments from City staff. All digital data and hard copy products will be delivered to the City with the final deliverable.

The COMPANY will report on findings from the analysis of the existing wastewater systems and the impacts of projected development/re-development.

3.0 Deliverables and Schedules Included in this Agreement.

The schedules and deliverables will be defined by project task and in accordance with the availability of required information and reasonable allowances for associated task effort and reasonable allowances for review by both the CLIENT and the COMPANY. Schedules shall be equitably adjusted as the tasks progress, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of the COMPANY.

Summary of Deliverables:

1. Meeting minutes for CLIENT and COMPANY in-person and virtual meetings in accordance with the project scope of services tasks outlined.
2. Defined project deliverables by project task.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this AGREEMENT:

- Evaluation of treatment systems
- On-site and/or private condition assessments.
- On-site and/or private wastewater systems assessments.
- Hydraulic modeling software purchase for CLIENT.
- Hydraulic model deliverable.
- Funding and permitting applications to federal, state, and local agencies.
- Historical, archeological, cultural resources, wetlands, floodplains, environmental investigations, assessments, tests, studies and reports.
- Geotechnical investigations or borings.
- Maps, plats, deeds, and easement documents.
- Legal services of any kind.
- Meetings with federal, state, and local agencies.
- Appearances at public meetings and public hearings beyond those delineated in scope of services.
- Grant funding coordination.
- Preliminary design of recommended improvements.
- Design phase services
- Bidding phase services
- Construction phase services
- Flow monitoring services
- Rainfall monitoring services
- CCTV and other condition assessment of collection systems.
- Lift station capacity analysis, condition assessment, or TCEQ compliance other than indicated herein.
- Modelling or capacity analysis of the existing system following this analysis at the request of Developers.

Supplemental services not included in the AGREEMENT can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

None.

6.0 Client Responsibilities

- Provide information and data requested and as identified in the scope of services.
- Provide relevant materials such as meter data, operations information, maps, drawings, specifications, shop drawings, O&M manuals, financial data and reports, operating data and reports, maintenance data and reports, and reports.
- Provide personnel knowledgeable about operations and maintenance facilities to be available for discussions and to answer questions, as well as participate in field collection effort.
- Provide assistance in determining the locations of existing facilities and utilities.
- Pay all permit fees and other required fees associated with the project.
- Review all project deliverable documents submitted by COMPANY and provide all comments back to COMPANY within one week or otherwise as required by the project scope of services and schedule.
- Attend all meetings and hearings as required for the project.
- Provide all legal services as required for the project.
- Appoint a CLIENT'S REPRESENTATIVE with respect to the services to be performed under this agreement. CLIENT'S REPRESENTATIVE shall have complete authority to transmit instructions, receive information, and interpret and define CLIENT'S policies. The COMPANY shall be entitled to rely on representations made by CLIENT'S REPRESENTATIVE unless otherwise specified in writing by CLIENT.

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the AGREEMENT is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non-salary expenses directly attributable to the project such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done. The task fees are estimated based upon the outlined scope and listed assumptions and data requirements. Should the work exceed the estimated hours due to incomplete data, CLIENT will be notified by COMPANY, and additional fee shall be negotiated accordingly.



Professional Services Summary of Tasks, Costs, and Hours Estimates ¹												
No.	Task	Start Task	End Task	Estimated Labor Cost	Estimated Reimbursable Cost	Total Task Hours	Estimated Total Cost	Estimated Cost Per Month	Hours Per Month	Average Hourly Rate	Duration Estimate	
1000	Project Management, Status Reporting, and Invoices	July '25	June '26	\$ 18,748.00	\$ -	74	\$ 18,748.00	\$ 1,562.33	7	\$ 253.35	Based on 12 Months	
2000	Project Meetings	July '25	June '26	\$ 19,994.00	\$ 807.00	76	\$ 20,801.00	\$ 1,733.42	7	\$ 273.70		
3000	General Wastewater Advisory Review and Mapping Services	July '25	June '26	\$ 89,568.00	\$ 404.00	396	\$ 89,972.00	\$ 7,497.67	33	\$ 227.20		
4000	System Inventory and Data Management	July '25	Mar '26	\$ 34,398.00	\$ -	170	\$ 34,398.00	\$ 3,822.00	19	\$ 202.34	Based on 9 Months	
5000	Wastewater Collection System Capacity Analysis	July '25	Mar '26	\$ 52,813.00	\$ 325.00	254	\$ 53,138.00	\$ 5,904.22	29	\$ 209.20		
6000	Wastewater System Hydraulic Modeling	July '25	Mar '26	\$ 44,002.00	\$ -	220	\$ 44,002.00	\$ 4,889.11	25	\$ 200.01		
7000	Wastewater Systems Capacity Analysis Reporting	July '25	Mar '26	\$ 43,610.00	\$ 325.00	216	\$ 43,935.00	\$ 4,881.67	24	\$ 203.40		
Estimated Annual Total				\$ 303,133.00	\$ 1,861.00	1,406	\$ 304,994.00					
Note ¹ : All hours and associated costs are estimated based upon the tasks outlined in the scope of services and listed assumptions and data requirements. Should work exceed the estimated hours due to incomplete data, CLIENT will be notified by COMPANY and additional fee shall be negotiated accordingly.							Estimated Total Cost	Estimated Cost Per Month				
							First 9 Months	\$ 272,613.75	\$ 30,290.42			
							Last 3 Months	\$ 32,380.25	\$ 10,793.42			
							July '25 through Sept '25	\$ 90,871.25				
							Oct '25 through Mar '26	\$ 181,742.50				
							April '26 through June '26	\$ 32,380.25				

8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it. **Reference CLIENT Master Professional Services Agreement.**



City of West Lake Hills City Council

AGENDA REPORT

Meeting Date:	<u>June 25, 2025</u>	Item Number:	<u>7</u>
Department:	<u>Administration</u>		
Prepared By:	<u>Trey Fletcher</u>	Cost / Budget:	<u>Annual cost \$71,146.08</u>
	<u>Univista SLA</u>		
Exhibits:	<u>Contract Rider</u>	Source of Funds:	<u>General Fund</u>

Subject

Discuss and consider action on a Service Level Agreement with UniVista.

Recommendation

Approval.

Discussion

Related to the City's information technology needs, Univista continues to serve as the City's master services provider, or MSP, and has been doing so for a number of years. This service level agreement (SLA) provides for base services to ensure the City's devices, networks and system are operating and maintained properly in order to ensure a continuity of operations.

An informal staff committee manages this agreement in lieu of an internal IT director.



PO Box 218
Cedar Park, TX 78630
Phone: 512-832-6209
Fax: 866-523-5476

Univista Comprehensive SLA

City of West Lake Hills ("THE CUSTOMER") accepts the following terms and conditions with respect to technical services provided by UNIVISTA, LLC. ("UNIVISTA") to assist THE CUSTOMER in the support of technology, products, services, and support systems developed by UNIVISTA, THE CUSTOMER, or a third party. This agreement is in effect for one year from **10/1/24** and supersedes any agreement now in effect between THE CUSTOMER and UNIVISTA.

1. SCOPE OF WORK

This agreement provides complete support to your organization through the following services:

- **Complete support** for **53** Workstation, **1** VIP Workstation, **5** Servers, **14** Supported Cisco & SonicWALL Firewalls, Access Points, and Network Switches, Synology Storage Arrays, and all Software installed on these systems.
- **A UniVista Support Team** consisting of a member of the vCIO team, Standards Alignment Specialist, and Support Desk Personnel.
- At least **one scheduled onsite visit every Quarter** by a member of your **UniVista** support team.
- **Regularly scheduled IT Strategy Planning & Budgeting**, network, and system security analysis.
- **IT Inventory Management** includes warranty tracking for monitored systems, annual Microsoft license audit, and product procurement.
- **Help Desk Support** including Remote and On-Site Support as needed.
- **24x7 After Hours Support** for Business Stopping Issues only.
- **1hr maximum response** to all business-stopping emergency issues. On-site response within 4 business hours if the issue cannot be resolved remotely.
- **Active Directory Maintenance and Management.**
- **Corporate Email Server Management and Support**, including supported versions of hosted Microsoft Exchange, Microsoft 365, MS Outlook, and mobile device connectivity to hosted Exchange and Microsoft 365.
- **Enrollment in the UniVista Cybersecurity suite** which includes Antivirus, Ransomware prevention, Content filtering, Spam Filtering, and CyberSecurity training for users of all covered desktops or laptops.
- **VPN Implementation and Management** for all monitored servers and VPN clients that are running a UniVista supported Antivirus client.
- **SharePoint Management**, top level site permissions management, and client connectivity support for any Microsoft 365 subscription that is procured through UniVista.
- Up to 2 weeks **Off-site Backup** for all monitored servers up to **3500** GB in total size including one week of disaster recovery run time. Daily Monitoring, maintenance, and backup integrity testing.
- Up to 2 weeks of **Local Backup**, or the maximum number of backups that are functionally allowed by the capacity of local backup storage, for all covered VIP workstations. Daily Monitoring and weekly maintenance of backup jobs, including weekly backup integrity testing.
- **24x7 Monitoring** of supported Servers, Switches, Firewalls, and Access Points.
- **Patch Management** for all covered servers and workstations for all currently supported versions of the following applications: Windows OS, Adobe Flash, Reader, & Shockwave, iTunes, Google Chrome, Oracle Java, PDF Creator, 7-Zip, Mozilla Firefox & Thunderbird, Notepad++, VLC Media Player, Microsoft Office.
- **Network Security and Performance Analysis & Management.** Including Optimization of existing infrastructure.
- **Access to the UniVista Library of policies and procedures.**
- **Emergency Loan** of one SonicWALL or Cisco firewall or switch at a supported customer site.
- **Monthly IT Health Reports.**
- **\$145.00 per hour** preferred rate for any tasks performed that are not within this scope of work.

2. PRICING

Monthly Pricing: \$ 5,928.84 + any applicable sales tax.

3. SERVICE GUARANTEE

- a. UNIVISTA will make every effort to respond to THE CUSTOMER in a timely manner and will begin working on THE CUSTOMER'S issue that are reported to the Univista Help Desk within the guidelines of this agreement.
- b. UNIVISTA will update THE CUSTOMER with any ticket status changes as they occur.
- c. UNIVISTA will make every effort to meet THE CUSTOMER's stated goals to the best of its ability within the timeframe specified by the customer.
- d. UNIVISTA will always treat every CUSTOMER issue with the same care and urgency that it would use to treat its own issues.
- e. UNIVISTA will always act in the best interest of THE CUSTOMER.
- f. UNIVISTA is not responsible for the proactive maintenance of any device or system owned or used by the CUSTOMER not covered under this agreement.

4. CUSTOMER SUPPORT INFO

- a. Primary Support Site:

911 Westlake Dr, West Lake Hills TX 78746

- b. Additional Support Site:

N/A

5. CUSTOMER REPRESENTATIVES

UNIVISTA agrees that one of THE CUSTOMER'S designated representatives must approve all services prior to the start of service. THE CUSTOMER has designated the following individuals as its representatives with UNIVISTA.

- a. Trey Fletcher tfletcher@westlakehills.gov 512-327-3628
(Name) (E-mail address) (Phone#)
- b. Scott Gerdes sgerdes@westlakehills.gov 512-327-1195
(Name) (E-mail address) (Phone#)

6. CUSTOMER BILLING INFO

- a. Vonda Ragsdale vragdsdale@westlakehills.gov 512-610-6848
(Billing Contact Name) (E-mail address) (Phone#)
- b. Customer Billing Address: 911 Westlake Dr, West Lake Hills TX 78746
- c. Billing E-mail address for all invoices: vragdsdale@westlakehills.gov & tsanchez@westlakehills.gov
(E-mail address)
- d. Default Payment method: Credit Card or Bank Account Bank Account Enroll this account in invoice Autopay N
Last 4# of default payment method (UNIVISTA will contact you to obtain complete account info)
- e. Sales Tax Eligibility: Non-Profit (Non-Profit docs needed) XXX For Profit

7. **DEFINITIONS**

- a. "Complete Support" shall mean Remote or On-Site services performed on behalf of THE CUSTOMER to maintain the current supported system(s), any current operating systems installed on these systems, and all legally acquired applications installed on these systems that are still supported by the manufacturer, at a status that is commensurate to the supported system's capabilities. "Complete Support" does not include:
 - i. Services necessary to implement purchased hardware or software upgrades or updates.
 - ii. The cost of any product necessary to maintain or improve the supported systems capabilities.
 - iii. Support for any 3rd party application that is not acquired from UniVista or does not include support from the manufacturer.
- b. "Remote Service" shall mean services performed on behalf of THE CUSTOMER by UNIVISTA from any UNIVISTA office.
- c. "On-Site Service" shall mean services performed on behalf of THE CUSTOMER by UNIVISTA at any location requested by a CUSTOMER REPRESENTATIVE as defined in this agreement.
- d. "Workstation" shall mean a system that UNIVISTA has defined as running a supportable operating system, that is in the form factor of a laptop or desktop computer.
- e. "Server" shall mean a system that UNIVISTA has defined as running a supportable operating system, that is used by the customer as a host for an application or data that is used by more than one CUSTOMER employee.
- f. "Services" shall mean the discrete technical support offerings consisting of technical administration services, programming services, consultation, tools, repair services, phone support or other support resources which may be provided to THE CUSTOMER by UNIVISTA.
- g. "Business Stopping issues" are defined as problems which halt productivity within the entire customer organization or problems that halt a customer process that has been identified as critical to the success of the customer.
- h. "Urgent - Failure to Plan Issues" are issues that are now urgent due to inadequate planning and failure to alert UNIVISTA staff at least 48 hours prior to the required installation date. For instance, the installation of a new device that had been known about by CUSTOMER or a vendor, or the start of a new employee.
- i. "Business Hours" are defined as Monday through Friday between 7am & 6pm. Any work beginning between 6pm & 7am the following day or during Saturday, Sunday or UniVista Holidays as defined on <http://www.univista.com/support/> are defined by UniVista as after-hours work.
- j. "Updates" shall mean free patches provided by the manufacturer to currently installed computer software which address bugs, improve stability, or modify existing features.
- k. "Upgrades" shall mean new version releases of computer software which may bundle updates with new features and functionality. Upgrades usually require coordinated backup and reinstallation of client- and server-side components, new licensing agreements with the manufacturer, and planning for file compatibility and user experience changes.

8. **BILLING**

- a. Terms are printed on the invoice and are subject to change with 30 days notification to the CUSTOMER.
- b. Price is based on the current supported infrastructure and will be increased or decreased during the Initial Term if CUSTOMER's inventory of supported virtual servers, desktops, or laptops has changed more than 10 devices or 30%, whichever is less, using the following rates:
 - i. Desktops or Laptops: \$95.00 per unit
 - ii. Servers: \$345.00 per unit
- c. Work performed after business hours that does not fall within the Scope of Work of this agreement will be subject to a \$100.00 surcharge per hour.
- d. **Urgent – Failure to Plan issues will be subject to a \$100.00 surcharge per hour.**
- e. Travel on behalf of a customer that is 30 miles or greater from the UNIVISTA office or any supported CUSTOMER site designated in section 4 of this agreement will be billed hourly at 50% of THE CUSTOMER's current hourly rate.
- f. Notice of non-payment will always be delivered in writing to the current CUSTOMER BILLING REPRESENTATIVE with a statement of unpaid invoices owed by the CUSTOMER.
- g. Depending on THE CUSTOMER's payment history, any unpaid invoice more than 30 days past the due date printed on the invoice can place the customer account on CREDIT HOLD. CREDIT HOLD will only be removed when THE CUSTOMER delivers or electronically transmits payment to UNIVISTA. Depending on THE CUSTOMER's payment history, they also may also be required to pay a \$100.00 SUPPORT REINSTATEMENT FEE to resume normal support.

9. **3rd PARTY LICENSING**

- a. UNIVISTA will notify THE CUSTOMER'S representative as specified in this agreement in writing when UNIVISTA finds that THE CUSTOMER is not in compliance with regards to 3rd party hardware or software licenses. UNIVISTA will then perform any installation or un-installation of software and hardware as directed by THE CUSTOMER'S representative to regain compliance.
- b. UNIVISTA is not responsible to act as a license compliance enforcer for any 3rd party manufacturer. It is THE CUSTOMER'S sole responsibility to maintain license compliance.

10. **CONFIDENTIALITY**

- a. THE CUSTOMER and UNIVISTA agree that any information disclosed by either party will be considered and referred to collectively in this Agreement as "Confidential Information." Confidential Information does not include information that:
 - i. Is now or subsequently becomes generally available to the public through no fault or breach on the part of THE CUSTOMER or UNIVISTA.
 - ii. THE CUSTOMER or UNIVISTA can demonstrate to have had rightfully in its possession prior to disclosure by either party.
 - iii. Is independently developed by THE CUSTOMER or UNIVISTA without the use of any Confidential Information.
 - iv. THE CUSTOMER or UNIVISTA rightfully obtains from a third party who has the right to transfer or disclose it.
 - v. Is considered public by the Texas Public Information Act.
- b. THE CUSTOMER and UNIVISTA will not disclose, publish, or disseminate Confidential Information to anyone other than those individuals who: (1) are employed at one of the sites described in this agreement or UNIVISTA, and (2) have a legal right to the Confidential Information.
- c. THE CUSTOMER and UNIVISTA agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information.
- d. Except as required by the Texas Public Information Act, THE CUSTOMER and UNIVISTA agree to accept Confidential Information for the sole purpose of activities as authorized by this Agreement.
- e. All Confidential Information remains the property of the originating party and no license or other rights, except for rights expressly granted by this Agreement, to Confidential Information is granted or implied hereby.
- f. THE CUSTOMER and UNIVISTA hereby acknowledge that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury that may be difficult to ascertain. Accordingly, THE CUSTOMER and UNIVISTA will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

11. **BEST PRACTICES**

- a. UNIVISTA CAN NOT BE HELD RESPONSIBLE FOR THE MISUSE OF ADMINISTRATIVE RIGHTS BY A CUSTOMER'S EMPLOYEE. THE COST OF REMEDIATION OF ANY SYSTEM MODIFIED, DAMAGED OR DELETED THROUGH SUCH MISUSE IS NOT COVERED BY THE SCOPE OF WORK OF THIS AGREEMENT.
- b. UNIVISTA CAN NOT GUARANTEE THE VIABILITY OF ANY BACKUPS STORED ON REMOVABLE MEDIA DUE TO THE POTENTIAL FALLABILITY OF THIS STORAGE TYPE.
- c. UNIVISTA CAN NOT RECOVER DATA THAT IS STORED WITHIN A SYSTEM, DATA VOLUME, DIRECTORY, OR DATABASE THAT IS NOT PROTECTED BY A BACKUP SYSTEM THAT IT APPROVES, MAINTAINS, ADMINISTARTES, AND TESTS ON A WEEKLY BASIS.

- d. UNIVISTA CAN NOT ADEQUATELY SECURE OR SUPPORT ANY CUSTOMER SYSTEM THAT DOES NOT ADHERE TO THE FOLLOWING BEST PRACTICES:
 - i. A COMPLEX PASSWORD SECURITY POLICY WHICH INCLUDES MULTIFACTOR AUTHENTICATION.
 - ii. REGULAR AUDITABLE CYBERSECURITY TRAINING THAT IS ADMINISTERED TO ANY STAFFMEMBER THAT IS ASSIGNED A CUSTOMER EMAIL ADDRESS.
 - iii. ALL WORKSTATIONS, SERVERS OR OTHER DEVICES CONNECTED TO THE CUSTOMER'S NETWORK MUST BE RUNNING FIRMWARE, SOFTWARE, AND SECURITY UPDATES THAT ARE CURRENTLY SUPPORTED BY THE MANUFACTURER AT A FREQUENCY RECOMMENDED BY THE MANUFACTURER.
 - iv. A BRING YOUR OWN DEVICE (BYOD) POLICY AND ACCEPTABLE USE POLICY THAT PROHIBITS THE USE OF UNPROTECTED OR UNPATCHED DEVICES ON THE NETWORK OR THROUGH A VIRTUAL PRIVATE NETWORK CONNECTION.
 - v. INSTALLATION, MAINTENANCE, AND REGULAR UPDATES FOR ANTIVIRUS AND ANTIMALWARE APPLICATIONS ON ALL DESKTOPS AND LAPTOPS THAT CONECT TO THE NETWORK.

THE COST OF REMEDIATION OF ANY ISSUE THAT IS CAUSED BY OR THROUGH ANY NETWORK OR SYSTEM THAT DOES NOT ADHERE TO THESE BEST PRACTICES IS NOT COVERED BY THIS AGREEMENT.
- e. TO ENSURE THAT UNIVISTA CAN HELP THE CUSTOMER MAKE THE MOST INFORMED AND TIMELY DECISIONS POSSIBLE:
 - i. AT LEAST ONE CUSTOMER REPRESENTATIVE WITH DECISION MAKING AUTHORITY WILL ATTEND UNIVISTA'S REGULARLY SCHEDULED PLANNING MEETINGS.
 - ii. THE CUSTOMER WILL BE FRANK AND HONEST ABOUT ITS GOALS, NEEDS, AND BUDGETS.
 - iii. THE CUSTOMER WILL ALWAYS BRING UNIVISTA INTO ANY DISCUSSION THAT DIRECTLY OR INDIRECTLY IMPACTS CYBERSECURITY, COMPUTERS, NETWORKS, CLOUD SERVICES, BUSINESS GROWTH PLANNING, OR ANY TECHNOLOGY THAT COULD IMPACT THE SYSTEMS COVERED BY THE SCOPE OF WORK OF THIS AGREEMENT.
- f. 3RD PARTY APPLICATION SUPPORT:
 - i. UNIVISTA WILL ALWAYS DO ITS BEST TO HELP THE CUSTOMER PROVIDE THE BEST AND MOST STABLE ENVIRONMENT FOR THE CUSTOMER'S USERS AND APPLICTIONS HOWEVER IT IS THE CUSTOMER'S RESPONSIBILITY TO MAINTAIN THE ACCURACY AND INTEGRITY OF THE RECORDS AND DATA STORED WITHIN THESE APPLICATIONS.
 - ii. UNIVISTA CANNOT GUARANTEE THE BEST PERFORMANCE, OR RELIABILITY, OF ANY APPLICATION THAT IS NOT CURRENTLY SUPPORTED BY THE APPLICATION'S MAINTENANCE ORGANIZATION.
 - iii. UNIVISTA WILL ALWAYS WORK WITH ANY APPLICATION OR SYSTEM VENDOR ON BEHALF OF THE CUSTOMER HOWEVER IT IS THE CUSTOMER'S RESPONSIBILITY FOR THE COST OF ANY SUPPORT AGREEMENT FOR THE APPLICATION.

12. **AGREEMENT TERM AND TERMINATION**

- a. This Agreement will commence upon the effective date of this Agreement and shall continue for **one year** (the "Initial Term") unless:
 - i. This Agreement is terminated earlier in accordance with the terms of this Agreement.
 - ii. THE CUSTOMER has elected to not renew this agreement in writing at least 30 days before the end of the current term of this agreement.
- b. The continuation by the parties of this Agreement after the expiration of the Initial Term or a Renewal Term and without having entered into a written agreement or extension shall be construed as an implied extension of this Agreement for one (1) year periods, each a renewal term (the "Renewal Term").
- c. THE CUSTOMER will be notified via email 60 days prior to the beginning of any Renewal Term of this agreement. The customer will be notified of the agreement renewal price at this time. If the CUSTOMER's supported device count remains the same, the renewal price will never increase more than 5%, or the current rate of inflation in Austin/Central Texas, whichever is greater.
- d. Added services shall be coterminous with the Initial Term or Renewal Term of this agreement and shall be billed from the first day of the month added in accordance with the billing period.
- e. UNIVISTA may terminate this Agreement upon thirty (30) days written notice to THE CUSTOMER for non-payment of invoices.
- f. UNIVISTA or THE CUSTOMER may terminate this Agreement for any reason, upon ninety (90) days written notice to UNIVISTA.
- g. Any balance owed, including balances set forth in any addendum to this agreement, upon termination of this agreement is accelerated and is immediately payable to UNIVISTA by THE CUSTOMER. The CUSTOMER shall not be required to pay any amounts owed after the date of termination unless the product or service is

being provided by a 3rd party, the product or service has a license requirement that extends beyond the termination period, and the product or service was ordered or purchased prior to the date UNIVISTA receives notice of termination.

- h. Upon termination of this Agreement for any reason, THE CUSTOMER and UNIVISTA shall immediately return all materials owned by the other party.
- i. UNIVISTA and THE CUSTOMER agree to attempt resolution of any disputes through formal or informal mediation prior to filing a lawsuit.

13. WARRANTY

UNIVISTA represents and warrants the Technical Services will conform to the DEFINITIONS AND SCOPE OF WORK as defined in this agreement or any addendum now in force. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, UNIVISTA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNIVISTA ASSUMES NO LIABILITY FOR THE LOSS OF ANY SOFTWARE OR TOOLS, NO LIABILITY FOR DAMAGES OR LOSSES, DIRECT OR CONSEQUENTIAL, WHICH MAY RESULT FROM THE USE, MISUSE OR ABUSE OF ANY SOFTWARE OR DEVICE EXCEPT FOR DAMAGES DIRECTLY CAUSED BY A UNIVISTA EMPLOYEE. UNIVISTA WILL REPAIR ANY DAMAGES CAUSED BY A UNIVISTA EMPLOYEE AT NO ADDITIONAL COST TO THE CUSTOMER.

DAMAGES FOR ANY LOSSES DIRECTLY CAUSED BY A UNIVISTA EMPLOYEE THAT ARE REPAIRED BY A 3RD PARTY SHALL NOT EXCEED THE REPLACEMENT COST OF ANY EQUIPMENT DAMAGED DIRECTLY BY SAID EMPLOYEE. DAMAGES TO CUSTOMER DATA DIRECTLY CAUSED BY A UNIVISTA EMPLOYEE THAT ARE REPAIRED BY A 3RD PARTY SHALL NOT EXCEED THE TOTAL UNIVISTA SERVICE AND CONTRACT BILLINGS FOR THE CUSTOMER DURING THE TERM OF THIS AGREEMENT.

14. SIGNATURES

Customer Representative

UniVista Representative

Printed Name

Printed Name

Title

Title

Date

Date

**GOVERNMENTAL CONTRACT AND PURCHASING RIDER
FOR THE CITY OF WEST LAKE HILLS, TEXAS
(Version September 2023)**

By submitting a response to a solicitation or bid, or by entering into a contract for goods or services and/or by accepting a purchase order, the contracting party identified below agrees that the below terms and conditions shall govern all agreements with the City unless otherwise agreed to by a specifically executed provision within the contract and if permissible by law. Absent a specifically executed provision, the below terms are BINDING and SUPERSEDE any and all other terms and/or conditions whether oral or written.

1. Application. This Governmental Rider applies to, is part of, and takes precedence over any conflicting provision in or attachment to the Contract (Contract) (attached hereto) of UNIVISTA, LLC, (Vendor). The Contract involved in this Rider is described as follows:

Title of Contract: *UNIVISTA COMPREHENSIVE SLA*

2. Payment Provisions. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. City reserves the right to modify any amount due to contractor presented by invoice to the city if necessary to conform the amount to the terms of the contract.

3. Multiyear Contracts. If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution). It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving contractor a written notice of termination at the end of its then current fiscal year.

4. Best Value Determination. All competitive bids or proposals received shall be evaluated based on the best value for the City. Best value shall be determined by any relevant criteria specifically listed in the solicitation and by considering all or part of the criteria listed below:

- a. Bid price.
- b. Reputation of the bidder and of bidder's goods and services.
- c. The quality of the bidder's goods or services.
- d. The extent to which the goods or services meet the City's needs.
- e. Bidder's past relationship with the City. All vendors shall be evaluated on their past performance and prior dealings with the City to include, but not limited to, failure to meet specifications, poor quality, poor workmanship, and late delivery.

5. Local Preference. The City Council supports the local preference option for purchasing. In accordance with Chapter 271.9051 of the State of Texas Local Government Code, the City Council may choose to award a competitive bid to a bidder whose principal place of business is in the City limits, provided that this bid is within 5% of the lowest bid price received.

6. No Ex-Parte Communications during Competitive Bidding Period. To insure the proper and fair evaluation of a response, the City prohibits ex parte communication (e.g., unsolicited) initiated by the proposed contractor to a City official or employee evaluating or considering the responses prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until 5:00 pm on the day specified as the deadline for questions. Any communication between responder and the City after the deadline for questions will be initiated by the appropriate City official or employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the response. Ex parte communication may be grounds for disqualifying the offending responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

7. Abandonment or Default. A contractor who abandons or defaults the work on the contract and causes the City to purchase the services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto and shall be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods, or services.

8. Disclosure of Litigation. Each contractor shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the respondent or which has occurred in the past in which the respondent has been judged guilty or liable by a competent court regardless of whether the Court Order or Judgment is final or on appeal.

9. Cancellation., the City reserves the right to cancel the contract without penalty by providing ninety (90) days prior written notice to the contracting party. Termination under this paragraph shall not relieve the contractor of any obligation or liability that has occurred prior to cancellation. **NOTE: This contract is subject to cancellation, without penalty, at any time the City deems the vendor to be non-compliant with contractual obligations.**

10. Annual Vendor Performance Review. The City reserves the right to review the vendor's performance at the end of each twelve month contract period and to cancel all or part of the agreement (without penalty) or continue the contract through the next period.

11. Compliance with other laws and certification of eligibility to contract. Any offer to contract with the City shall be considered an executed certification that the contractor will/shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. ***Additionally, such offer shall indicate that the contractor has fully read and understood the terms and conditions for***

eligibility to contract with the City pursuant to Chapter 38 of the City's Ordinances and certifies they are in compliance with those local requirements. When requested, the contractor shall furnish the City with satisfactory proof of its compliance within 10 days or any contract with the City is void.

12. Compliance with all Codes, Permitting and Licensing Requirements. The successful contractor shall comply with all national, state and local standards, codes and ordinances as well as any other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The successful bidder shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations.

13. Liability and Indemnity of City. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.. (Section 5, Article XI, Texas Constitution)

14. Indemnity and Independent Contractor Status of Contractor. Contractor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the contractor, its officers, agents, and employees. It is understood and agreed that the contractor and any employee or sub-contractor of contractor shall not be considered an employee of the City. The contractor shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all contractor's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.

15. Liens. Contractor agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request the contractor or subcontractors shall provide a proper release of all liens, or satisfactory evidence of freedom from liens shall be delivered to the City.

16. Confidentiality. Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law or

regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

17. Tax Exemption. The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed, the City will remit payment less sales tax.

18. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

19. Sovereign Immunity. Any provision of the Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the contract.

20. Governing Law and Venue. Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Travis County, Texas.

21. Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, the City may not accept or enter into a contract until it has received from the Contractor a completed, and signed TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering the Contract.

Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 may accompany the bid or may be submitted separately, but must be provided to the City prior to the award of the contract. Neither the City nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any bidder with respect to the proper completion of the TEC Form 1295.

22. Amendment. Any provision of the Contract is void and unenforceable if it authorizes Contractor to amend the Contract at its sole discretion or otherwise without a negotiated and signed amendment to the Contract.

23. Texas Government Code Mandatory Provisions. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that

CITY OF WEST LAKE HILLS,
TEXAS PURCHASING RIDER

discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Company hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Company hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Company hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Company hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

CITY OF WEST LAKE HILLS, TEXAS

UNIVISTA, LLC

By: _____

City Administrator

Title: _____

Date: _____

Date: _____



City of West Lake Hills City Council

AGENDA REPORT

Meeting Date:	June 25, 2025	Item Number:	8
Department:	Administration Trey Fletcher		
Prepared By:	City Administrator Prop A Presentation Prop B Presentation	Cost / Budget:	See below
Exhibits:		Source of Funds:	Debt Issuances

Subject

Discussion and update on bond items regarding Proposition A (new municipal complex) and Proposition B (street and drainage projects).

Recommendation

Receive report.

Discussion

The purpose of this item is to provide the City Council and the West Lake Hills community with an update regarding both bond project initiatives including project scope and development status, schedule and budget and costs.

Prop A authorized \$13.2 million and due to land acquisition and cost escalation considerations City Council authorized an additional \$9.5 million in certificates of obligation. Construction began in May 2024 and is scheduled for substantial completion on July 14, 2025. Generally, since the last update was provided to the City Council on May 28, the following has transpired:

- Bee Cave signal is operational and road striping is complete
- Mill work is being installed
- Elevator was installed
- Parking lot lights are installed
- Tree planting has started around parking lots
- Carpet/flooring has been installed in the second floor and finished offices on the first floor.

Looking ahead:

- Completion of interior finishes
- Elevator Final Inspection
- Landscape Installation
- Security Final Inspection

- Fire Marshal Inspection
- Substantial Completion
- Final Completion

Prop B authorized \$11.8 million for the completion of various street and drainage improvements. Since the last update on May 28:

- Curbing, utility and drainage work was completed in the intersection of Eanes School Road and Camp Craft.
- Sidewalk construction on the east side started

Looking ahead:

- Paving will start the week on July 7th
- Installation of signage
- Certificate of substantial completion for Eanes School Road and review of the project is pending.
- Punch list items remaining on Yaupon Valley (June 5th) and leveling of water valves scheduled in June.
- Progress continues on Camp Craft Road low water crossing working Monday through Saturday. Project remains on schedule with the road closure ending 7/31.
- Phase II subgrade (south end of the project)

WEST LAKE HILLS MUNICIPAL COMPLEX PROJECT UPDATE 6/25/2025



JOB SITE ENTRANCE



BEE CAVE RD. STRIPING



BEE CAVE RD. SIGNAL



SCHEDULE

West Lake Hills - Municipal Complex		97	43	20-Mar-25 A	14-Aug-25	14-Aug-25
Milestones		28	28	07-Jul-25	14-Aug-25	14-Aug-25
A1170	MEP Final Inspections Complete	0	0		07-Jul-25	11-Jul-25
A2440	Elevator Final Inspection Complete	0	0		10-Jul-25	11-Jul-25
A2430	Security Final Inspection Complete	0	0		11-Jul-25	11-Jul-25
A1140	Fire Marshall Inspection Complete/Building TC	0	0		14-Jul-25	14-Jul-25
A1150	Substantial Completion	0	0		14-Jul-25*	14-Jul-25
A1160	Final Completion	0	0		14-Aug-25	14-Aug-25

FRONT ENTRANCE



COURT OFFICE



SECOND FLOOR HALL



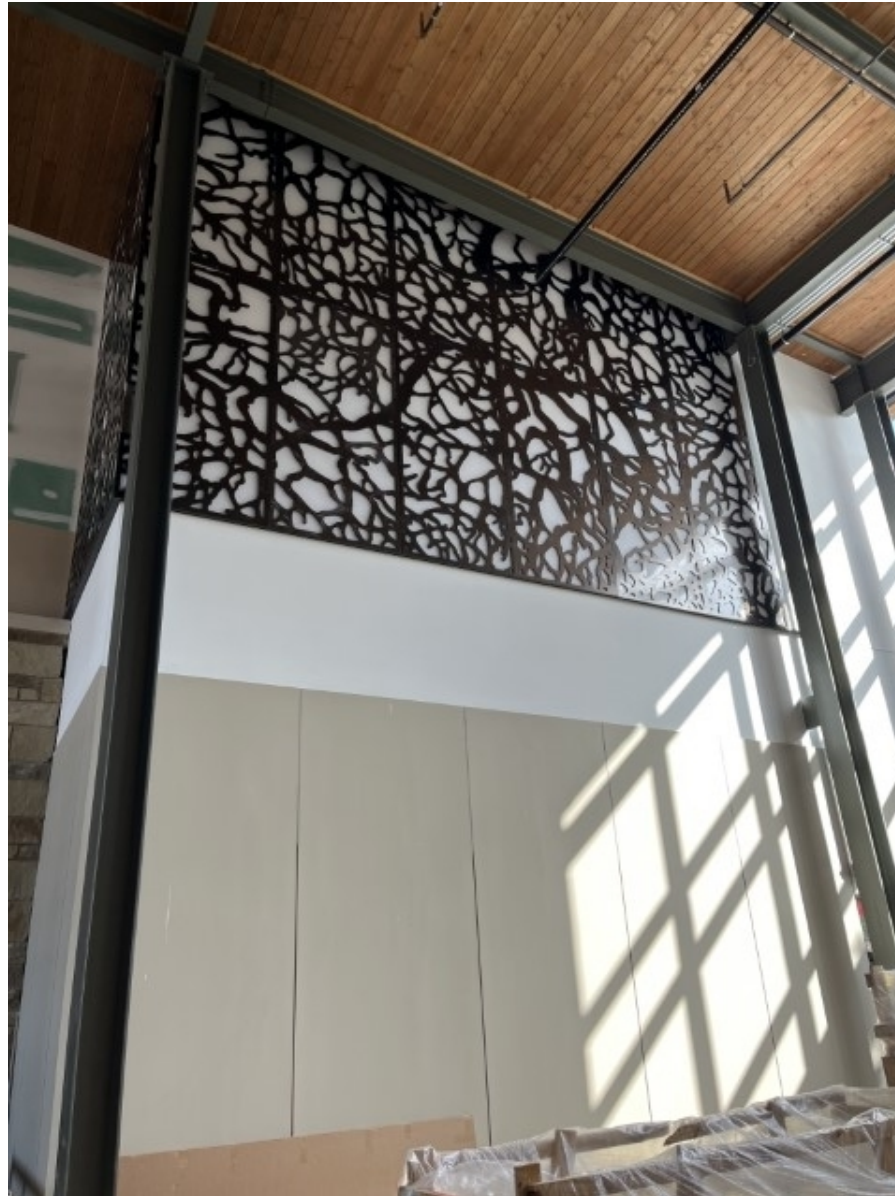
COUNCIL/COURT ENTRANCE



DOWNSTAIRS HALL BATHROOM



MAIN LOBBY LIGHT WAVE PANELS



EAST SIDE DOWN SPOUT



EAST SIDE DOWN SPOUTS



TREES AND LIGHTPOLE



TOPSOIL



FRONT GATE



EAST GATE



JOB TRAILER REMOVED



MAIN BUILDING ADDRESS



ASSET BUILDING ADDRESS



PROJECT CONTINGENCIES

CTR #	Description	Owner Contingency	Construction Manager's Contingency	SpawGlass Final GMP (12.07.23)
	Beginning Balance	\$210,000.00	\$571,296.00	\$16,902,447
001	Berdoll Wood Harvesting	\$13,525.12		
002	Structural Steel Modifications from 50%		\$87,833.00	
003	Site Utility Modifications from 50% CD's		\$21,116.00	
005	Additional Erosion Controls from 50% to 100%		\$9,334.57	
008	Upsize gas line service and concrete per Addendum #2		\$18,624.98	
0014	Second floor wall, doors and glass changes. Also additional bullet resistant doors on first floor	\$42,248.67		
0015	Storefronts to be properly sealed to stone		\$5,014.55	
0017	Additional concrete and rebar for detention pond		\$69,355.96	
0019	Moisture resistant drywall throughout building		\$16,085.97	
0020	Increase of roofing R-value from 25 to 30		\$31,747.54	
0021	Credit for deletion of 1055 A and B BR resistant aluminum storefront. Captured in BTR-0046	(\$19,745.00)		
21Rev.	Duplicate credit for deletion of 1055 A and B. This was a mistake and is corrected in CTR 0025. Tile in police corridor and framing where doors where deleted and second story storage. Fire Marshall had SG add and area of refuge.	\$14,720.00		
0025	This corrects the double credit from CTR's 021 and 021Rev. SG gave the \$19,745 in error this CTR corrects that mistake.	\$19,745.00		
0026	Fund remaining PCI design change items (lightwave panels)		\$6,704.37	
0027	Revision to structural and architectural drawing. Added material for structural at curtain walls.	\$47,079.45		
0028	Doors, walls, glass and glazing from ASI #6		\$48,429.45	
029	Framing Glass and glazing for Curtain walls	\$66,481.99		
030	MEP, Concrete, Waterproofing, Drywall, Framing and Signage		\$47,321.57	
031	Concrete, Millwork, Fire Sprinkler, Flooring		\$46,872.23	
	Remaining Balance	\$25,944.77	\$162,855.81	

PROJECT CONTINGENCIES

CTR #	Description	Owner Contingency	Construction Manager's Contingency	SpawGlass Final GMP (12.07.23)
Beginning Balance		\$210,000.00	\$571,296.00	\$16,902,447
032	Generator and Elevator storage due to permanent power.		\$24,899 .00	
033	Cell phone dialer for elevator		\$5720.00	
034	Added Air compressor for PD and automatic paper towel dispensers for all bathrooms	\$20,471.15		
035	Detention pond grading and re-mobilization for paving at north parking lot		\$49,554.57	
036	Concrete mow strips, fencing and gates, relocation of HVAC diffusers, rubber base at asset building, paint and patch work for light wave panels, masonry at west column, replace misc, hardware		\$46,035.37	
037	Underground utilities for west downspout, float out of elevator shaft for handrail and tile, blocking for handrail at elevator.			
Remaining Balance		\$5,473.62	\$20,402.75	

WEST LAKE HILLS MUNICIPAL COMPLEX





Agenda Item - Roadway Bond Project Update

West Lake Hills City Council
June 25, 2025

Accomplishments

- Westlake Drive/Redbud Tr/Yaupon Valley/Laurel Valley Road
 - Punchlist work in progress
 - Water valve box adjustments
- Eanes School Road
 - Walk-through was completed on June 3, 2025
 - Punchlist work in progress
 - Stop bar at school driveway
 - Install reflectors



Eanes School Road Crossing



Current Activities

- Camp Craft Road
 - Full roadway closure began on February 1, 2025
 - Curb installation
 - Sidewalk installation
 - Subgrade prep and grading
 - Additional waterline relocations and adjustments – CID coordination
 - Crews onsite 6 days/week





Upcoming Activities

- Complete punchlist items for Redbud, Westlake, Yaupon, and Laurel Valley
- Complete punchlist items for Eanes School Road Crossing
- Continue Camp Craft Road construction
 - Paving week of July 7th
 - Continued sidewalk installation
 - Sod installation
 - Install signage and pavement markings
 - Walk-through of project
 - Roadway projected to be open by August 1
 - Work will still be ongoing after opening



City of West Lake Hills City Council

AGENDA REPORT

Meeting Date:	June 28, 2025	Item Number:	9
	Building & Development		
Department:	Services		
Prepared By:	Jennifer C. Bills	Cost / Budget:	None
Exhibits:	N/A	Source of Funds:	N/A

Subject

Receive an update and consider possible action regarding City of West Lake Hills v. Jaffe – 1405 Wildcat Hollow.

Discussion

There have been no changes since the last update.

The demolition of the property at 1508 Westlake Drive was substantially complete on May 14, 2025. Inspectors continue to monitor the erosion controls on both sites. The replat of the property to incorporate part of 1508 Westlake Drive into 1405 Wildcat was subsequently approved on May 16, 2025, as all comments were addressed. The signed plat mylar and tax certificates have not been submitted to the city for recordation.

Staff have reviewed the second submittal and returned comments to the agent for the property owner. Some outstanding concerns relate to the improvements at the front of the property that encroach into the right-of-way, tree replacement, securing off-site easements, coordination of this project with the existing improvements and submitting related applications (license to encroach, OSSF, additional variances).

Staff and the applicant's agent are having regular Thursday meetings (as needed) to discuss outstanding issues.