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OCT 15 2009

OPINION COMMITTEE



FILE # ML-46203-09  
I.D. # 46203

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AUSTIN, TEXAS 78768-2910  
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WWW.HOUSE.STATE.TX.US

State of Texas  
House of Representatives

**TODD HUNTER**  
STATE REPRESENTATIVE • DISTRICT 32

**DISTRICT OFFICE:**  
15217 S.P.I.D. SUITE 205  
CORPUS CHRISTI, TEXAS  
78418-6196  
PHONE: (361) 949-4603  
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(COUNTIES: ARANSAS, CALHOUN, NUECES (PART), SAN PATRICIO)

October 15, 2009

The Honorable Greg Abbott  
Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0831-GA**

Attention: Nancy Fuller - Chair, Opinions Committee

Dear General Abbott:

I am submitting this letter to formally request an Attorney General's Opinion regarding an issue that has arisen in the district of State Rep. Armando "Mando" Martinez (District 39). The specific situation relates to the following:

RE: Request for opinion regarding whether the Texas Local Government Code 271.118(d) prohibits a company from being selected as a Construction Manager at Risk for a City project if a related company has been chosen as the City's project manager and design engineer on the project.

I have enclosed supporting documents including a letter written to me by Rep. Martinez that details the situation in his district and the need for clarification on the pertaining statute.

I appreciate your attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Hunter", written over a horizontal line.

Todd Hunter  
State Representative, District 32

The State of Texas  
House of Representatives

Armando "Mando" Martinez

State Representative

District 39

Capitol Office:  
E2.312  
P.O. Box 2910  
Austin, TX 78768-2910  
512-463-0530  
512-463-0849 Fax

District Office:  
800 W. Railroad St.  
Room H-111  
Weslaco, TX 78596  
956-447-9473  
Fax 956-447-8683

September 28, 2009

The Honorable Todd A. Hunter  
State Representative  
Capitol Extension  
Room E2.808  
Austin, Texas 78701

Dear Representative Hunter:

The City of Weslaco, a city in my district, asked that I obtain a clarification of a statute as it pertains to a specific situation that has arisen. I initially talked with the Texas Legislative Council for clarification, but it was their opinion an Attorney General's Opinion was the only remaining solution for me to obtain any sort of clarification.

I respectfully ask that you request an Attorney General's Opinion on my behalf. Below are the details concerning the issue.

RE: Request for opinion regarding whether the Texas Local Government Code §271.103(d) prohibits a company from being selected as a Construction Manager at Risk for a City project if a related company has been chosen as the City's project manager and design engineer on the project.

The City of Weslaco selected Camp Dresser McKee, Inc. (CDM) as Project Manager for all of the City of Weslaco's 2007 Bond Issue Projects. The Contract was for \$1.2 million and it included \$220,000 for oversight of construction projects.

The City of Weslaco voted to select CDM to design, bid, and construct a 2.5 million gallons per day (mgd) wastewater treatment plant. On December 16, 2008, the City of Weslaco selected constructors, Inc (CCI), a subsidiary of CDM, based on CDM's recommendation to construct improvements to the City's Wastewater Treatment Plant. The agreement with CCI was a Construction Manager at risk (CMAR) contract.

CDM and CCI share the same office and telephone number, 3050 Post Oak Boulevard, Suite 300, Houston, Texas 77056; 713-4237300, and 713-440-0173.



COMMITTEES: CORRECTIONS • JUDICIARY & CIVIL JURISPRUDENCE

Email: mando.martinez@house.state.tx.us

Task 7 of Exhibit C in the Engineering Contract with CDM for the design, bid and construct of the 2.5 mgd wastewater treatment plant had allocated \$705,000.000 for a resident project representative (RPR) to assist the Owner in inspecting and reviewing the contractors' work to conform that it is in compliance with the plans and contract documents.

Task 7 further states that the "RPR is the engineer's agent at the site and will act as directed by and under the supervision of the Engineer."

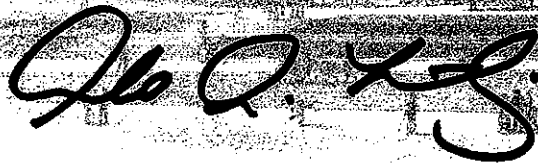
Texas Local Government Code §271.118(d) states that a "governmental entity shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity."

Because CCI is a subsidiary of CDM and CDM is reviewing and testing its subsidiary's work, is this arrangement prohibited in the light of Texas Local Government Code §271.118(d)? What does this relationship do to contracts that are in place?

I respectfully request clarification of whether Texas Local Government Code §271.118(d) prohibits a company from being selected as a Construction Manager at Risk for a City project if a related company has been chosen as the City's project manager and design engineer on the project.

Thank you very much for your attention to this request. If you have any questions, please do not hesitate to contact my office.

Sincerely,



Enclosure: Standard Form of Agreement Between Owner and Engineer  
2.5 MGD WWTP for the City of Weslaco with Exhibits "A", "B", and "C"

Standard Form of Agreement Between Owner and Engineer Miscellaneous  
Improvements at the City of Weslaco WTP Exhibits "A", "B", and "C"

Agreement Between owner and Construction Manager with Exhibit "A"

Master Service Agreement between owner and Engineer

Task Order No. 1 To Master Service Agreement between owner and Engineer  
with Exhibit "A"



3050 Post Oak Blvd., Suite 300  
Houston, Texas 77056  
713 423-7300  
713 840-0173

June 1, 2009

Mayor Buddy de la Rosa  
City of Weslaco  
255. S. Kansas  
Weslaco, TX 78956

Subject: North Wastewater Treatment Plant  
Aeration Basin / Clarifier Structure Subcontract

Mayor:

This letter is to confirm the specific directive you gave CCI on Thursday, May 28, 2009 to terminate our subcontract with CSA Construction Inc., and instead award a contract to L&G Concrete for their previously submitted bid amount. We did terminate CSA's subcontract on Friday, May 29, 2009 and have now forwarded a new subcontract to L & G Concrete.

We also understand the City's cognizance of, and agreement to reimburse CDM for any potential costs incurred to date by CSA, as well as the City's obligation to indemnify CDM against any lawsuits, costs, damages and liabilities resulting from this action. As we discussed last Friday before the commission meeting, CSA is very disappointed with the City's decision due to the fact that they constructed the South WWTP but will hopefully be able to participate in some other manner as we move forward.

Please feel free to contact me if you have any questions.

Regards,

Stan Conley  
Area Manager  
CDM Constructors Inc.

Cc: Amanda C. Elizondo, City Secretary

Chitra Parameswar, CCI Project Manager

5

Document code

AUG 02 2007

**STANDARD FORM OF AGREEMENT  
BETWEEN  
OWNER AND ENGINEER  
2.5 MGD WWTP for the City of Weslaco**

WMS cgc

THIS IS AN AGREEMENT made as of 7/22, 2007 between City of Weslaco ("OWNER") and Camp Dresser & McKee Inc. ("ENGINEER").

OWNER intends to design, bid and construct a 2.5 mgd wastewater treatment plant (WWTP) on a 21-acre site immediately to the north of the City's existing North WWTP. The proposed WWTP will be located on the site of an abandoned industrial wastewater treatment pond that formerly treated wastewater from a produce canning operation.  
(the "Project").

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

**ARTICLE 1 – SCOPE OF SERVICES**

- 1.1 ENGINEER agrees to perform for OWNER services as described in Exhibit A (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

**ARTICLE 2 – TIMES FOR RENDERING SERVICES**

- 2.1 The specific time period for the performance of ENGINEER's Services are set forth in Exhibit A.
- 2.2 If the specific periods of time for rendering services or specific dates by which services are to be completed are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance and compensation for ENGINEER's services shall be adjusted equitably.
- 2.3 If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised

**ARTICLE 3 – OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and, as applicable to the Services, any other data relative to design or construction of the Project, all of which ENGINEER shall be entitled to rely upon.
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any defect or conformance in ENGINEER's Services or in the work of any Contractor.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

#### ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES

- 4.1 Methods of Payment for Services of ENGINEER.
  - 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit N/A.
  - 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Invoices are due and payable on receipt.
  - 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

#### ARTICLE 5 – GENERAL CONDITIONS

- 5.1 Standard of Care  
The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality.
- 5.2 Opinions of Probable Construction Cost  
ENGINEER's opinions of probable Construction Cost, as applicable to the Services, provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or

over competitive bidding or market conditions, or when the Project will be constructed ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

### 5.3 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

### 5.4 Use of Documents

5.4.1 All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

5.4.2 OWNER may rely upon that data or information set forth on paper (also known as hard copies) that the OWNER receives from the ENGINEER by mail, hand delivery, or facsimile, are the items that the ENGINEER intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by the ENGINEER to the OWNER are furnished only for convenience, not reliance by the OWNER. Any conclusion or information obtained or derived from such electronic files will be at the OWNER's sole risk. In all cases, the original hard copy of the documents takes precedence over the electronic files.

5.4.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the OWNER agrees that it will perform acceptance tests or procedures within 60 days, after which the OWNER shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the ENGINEER.

5.4.4 When transferring documents in electronic media format, the ENGINEER makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the ENGINEER.

5.4.5 OWNER may make and retain copies of documents for information and reference in connection with use on the Project by OWNER. ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and other projects of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.

5.4.6 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the

Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.5 Controlling Law

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

Hidalgo County, Texas

MMS  
4-25-08

JM  
8-15-08

5.6 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.7 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

5.8 Successors and Assigns

5.8.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.8.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.8.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.8.3. Unless expressly provided otherwise in this Agreement:

5.8.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

5.8.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.9 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by



facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.10 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.11 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

5.12 Environmental Site Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

5.13 Insurance

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property.

5.14 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.15 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.16 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.17 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.18 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.19 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.20 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

5.21 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.22 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. ~~If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.~~

MSK  
4-25-2008  
JRM  
5-15-08

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

ARTICLE 6 - DEFINITIONS

6.1 Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1.1 Services

The services to be performed for or furnished to OWNER by ENGINEER described in this Agreement.

6.1.2 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.1.3 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.1.4 Construction Cost - ♦

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided

♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

- 6.1.5 Documents  
As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.
- 6.1.6 Contractor - ♦  
The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.
- 6.1.7 ENGINEER's Subcontractor.  
A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.
- 6.1.8 Reimbursable Expenses.  
The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.
- 6.1.9 Resident Project Representative - ♦  
The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").
- 6.1.10 Standard General Conditions - ♦  
The Standard General Conditions of the Construction Contract (No. N/A) of the Engineers Joint Contract Documents Committee.
- 6.1.11 Total Project Costs - ♦  
The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

## ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

- 7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

Exhibit A - Engineer's Services, Owner's Responsibilities, Time for Performance, Method of Payment, and Special Provisions.

Exhibit B - Duties, Responsibilities and Limitations of Authority of the Resident Project Representative.  
(Use when RPR Services are provided.)

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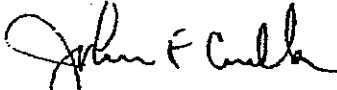
♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.  
Owner and Engineer – 2/2008

Exhibit C - City of Weslaco 2.5 MGD WWTP Design Scope of Work for Preliminary Engineering, Final Design, Bidding, and Construction Services.

This Agreement (consisting of Pages 1 to 9 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:



By: Buddy de la Rosa  
Title: Mayor  
Date: 7-22-08

Address for giving notices:  
City of Weslaco  
255 S. Kansas  
Weslaco, Texas 78596

ENGINEER:



By: Mari Garza-Bird, P.E.  
Title: Associate  
Date: 7-31-2008

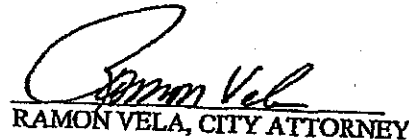
Address for giving notices:  
CDM  
1777 NE Loop 410, Suite 704  
San Antonio, Texas 78217  
P: 210-826-3200  
F: 210-826-8876

500MMS  
JRE

ATTEST



APPROVED AS TO FORM:

  
RAMON VELA, CITY ATTORNEY

**EXHIBIT A  
TO AGREEMENT BETWEEN  
OWNER AND ENGINEER  
(STUDY, REPORT, DESIGN AND CONSTRUCTION SERVICES)**

This is an exhibit attached to and made a part of the Agreement dated \_\_\_\_\_, 20\_\_\_\_, between City of Weslaco (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) for professional services.

**1.0 ENGINEER'S SERVICES**

**1.1 Study and Report Phase**

Upon this Agreement becoming effective, ENGINEER shall::

- 1.1.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.
- 1.1.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services which are not part of ENGINEER's Services, and assist OWNER in obtaining such data and services.
- 1.1.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.
- 1.1.4 Evaluate various alternate solutions available to OWNER as described herein, and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment best meet OWNER's requirements for the Project.
- 1.1.5 Prepare a report (the "Report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following: opinion of probable Construction Cost, allowances for contingencies including costs of design professional and related services based on information furnished by OWNER for allowances and other items and services included within the definition of Total Project Costs.
- 1.1.6 Furnish the Report to and review it with OWNER.
- 1.1.7 Revise the Report in response to OWNER's comments, as appropriate, and furnish final copies of the Report in the number set forth herein.
- 1.1.8 Submit the Report within the stipulated period indicated herein.
- 1.1.9 ENGINEER's Services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to review the portions of the Project specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.

The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 1.1 are amended and supplemented as follows:

See Exhibit C

1.2 Design Phase

- 1.2.1 Prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen-division format of the Construction Specifications Institute).
- 1.2.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.
- 1.2.3 Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER as a result of changes in scope, extent or character or design requirements of the Project.
- 1.2.4 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.2.5 Furnish five copies of the above documents, Drawings and Specifications to and review them with OWNER.
- 1.2.6 ENGINEER's services under the Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Design Phase.

The duties and responsibilities of ENGINEER during the Design Phase are amended and supplemented as follows:

See Exhibit C

1.3 Bidding or Negotiating Phase

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

- 1.3.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.
- 1.3.2 Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

- 1.3.3 Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 1.3.4 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.
- 1.3.5 The Bidding or Negotiating Phase will terminate and the Services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 1.3 are amended and supplemented as follows:

See Exhibit C

1.4 Construction Phase

During the Construction Phase:

- 1.4.1 General Administration of Construction Contract  
ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

1.4.2 Visits to Site and Observation of Construction

In connection with observations of the work of Contractor while in progress:

- 1.4.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 1.4. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 1.4.2.2 and other express or general limitations in this Agreement and elsewhere.



1.4.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

1.4.2.3 Duties, Responsibilities and Authority of the Resident Project Representative are set forth in Exhibit B.

1.4.3 Defective Work

During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

1.4.4 Clarifications and Interpretations: Field Orders

ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

1.4.5 Change Orders and Work Change Directives

ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

1.4.6 Shop Drawings

ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.4.7 Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and

determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

1.4.8 Inspections and Tests

ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

1.4.9 Disagreements between OWNER and Contractor

ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.4.10 Applications for Payment

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

1.4.10.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 1.4.10.1 are expressly subject to the limitations set forth in paragraph 1.4.10.2 and other express or general limitations in this Agreement and elsewhere.

1.4.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing

and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.4.11 Contractor's Completion Documents

ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 1.4.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

1.4.12 Substantial Completion

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

1.4.13 Final Notice of Acceptability of the Work

ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph 1.4.10.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

1.4.14 Limitation of Responsibilities

ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

1.4.15. Duration of Construction Phase

The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 1.4 are amended and supplemented as follows:

See Exhibit C

2.0 OWNER'S RESPONSIBILITIES

2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

- 2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;
- 2.1.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment;
- 2.1.3 Appropriate professional interpretation of all of the foregoing;
- 2.1.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
- 2.1.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;
- 2.1.6 Property descriptions;
- 2.1.7 Zoning, deed and other land use restrictions; and
- 2.1.8 Other special data or consultations not covered in Article 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

- 2.2 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.
- 2.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.
- 2.5 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.
- 2.6 Provide, as may be required for the Project:
  - 2.6.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
  - 2.6.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and
  - 2.6.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.
- 2.7 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

2.7.1 That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

2.7.2 That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 2.7.1 and 2.7.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

2.8 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

2.9 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

2.10 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

2.11 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 2.1, 2.2 and 2.4 through 2.11, inclusive) and other costs so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

2.12 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and Substantial Completion and final payment inspections.

2.13 Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.

2.14 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

### 3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

The anticipated duration for design is 12 months. The anticipated duration for construction is 18 months.

### 4.0 METHOD OF PAYMENT

Exhibit A - 1/2006  
Owner and Engineer-Study, Report, Design and Construction

The method of payment for Services rendered by ENGINEER shall be as set forth below:

Lump sum agreement for Tasks 1-3 as shown in Exhibit C, for a total fee of \$2,077,700.00

All Task 4 Services shown in Exhibit C, will be negotiated on an "as needed" basis.

Task 4 Services, as shown in Exhibit C, are hourly rates with a not to exceed amount of \$1,166,000.00

Task 4 Expenses, as shown in Exhibit C, will be reimbursed at cost.

5.0 SPECIAL PROVISIONS

OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

The following hourly rates will be used for Task 4 as shown in the billing table below.

**Hourly Billing Rate Table**

<b>Description</b>	<b>Hourly Rate</b>
Senior Technical Advisor	\$260.00
Associate	\$195.00
Principal	\$185.00
Senior Engineer	\$175.00
Staff Engineer	\$135.00
Graduate Engineer (EIT)	\$90.00
Senior Support Services (GIS / CADD)	\$95.00
Senior Administrative Services	\$85.00
Staff Support Services (Clerical)	\$60.00

**EXHIBIT B TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

**DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY  
OF THE RESIDENT PROJECT REPRESENTATIVE**

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on 20 between City of Weslaco (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the work of Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

**A. General**

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

**B. Duties and Responsibilities of RPR**

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. *Liaison:*
  - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
  - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. *Shop Drawings and Samples:*
  - a. Record date of receipt of Shop Drawings and Samples.
  - b. Receive Samples which are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
  - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - c. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.



8. *Records:*
  - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.
  - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
  - c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
9. *Reports:*
  - a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
  - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
  - c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.
  - d. Report immediately to ENGINEER and OWNER the occurrence of any accident.
10. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
12. *Completion:*
  - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
  - b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
  - c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

**C. Limitations of Authority by RPR**

**Resident Project Representative:**

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

## Exhibit C

### City of Weslaco 2.5 MGD WWTP Design Scope of Work for Preliminary Engineering, Final Design, Bidding and Construction Services

#### Purpose of Project

OWNER desires to design, bid and construct a 2.5 mgd wastewater treatment plant (WWTP) on a 21-acre site immediately to the north of the City's existing North WWTP. The proposed WWTP will be located on the site of an abandoned industrial wastewater treatment pond that formerly treated wastewater from a produce canning operation.

The proposed wastewater treatment process will consist of a biological treatment process, secondary clarification, aerobic sludge digestion (if an extended aeration process is not selected in the preliminary design phase), flow measurement, disinfection and dechlorination (if chlorination is selected as the disinfection process in the preliminary design phase).

The proposed WWTP will share some facilities with the City's existing North WWTP, however the biological treatment system will be designed to operate as a separate, stand-alone process. The proposed WWTP will utilize a new headworks facility for primary treatment that will be constructed on the existing WWTP site and is currently being designed by others. Waste activated sludge from the proposed WWTP will be pumped to the existing North WWTP where it will be processed on sludge drying beds. Therefore, no headworks (or other primary treatment) or sludge drying beds (or other sludge dewatering facilities) are included in the design of this facility.

As a result of the concurrent design of improvements to the City's existing North WWTP (done by others and not included in this scope of work), the power supply system to that facility will need to be upgraded. As part of the design of the proposed 2.5 mgd WWTP, the power supply to both facilities will be consolidated on the site of the proposed plant. All necessary transformers will be located at the new 21-acre site, and power will be run from the new site to the existing North WWTP as part of this design project. New electrical gear and motor control centers at the existing North WWTP will be provided by others, and is not part of the design scope of work for this contract.

A new emergency generator with automatic switchover capability will service both the proposed 2.5 mgd plant and the City's existing North WWTP. The new emergency generator will be located on the new 21-acre site and is included in the design scope of work for this contract.

The scope of work presented herein is for Basic Engineering Services, which will preliminary engineering, final design, bidding and construction phase services, and selected Additional Services, which will include permitting, surveying and geotechnical services.

## Exhibit C

### Basic Engineering Services

#### Task 1 Preliminary Engineering - \$395,000

##### Task 1.1 - Review Historic Influent and Effluent Wastewater Data, Existing Plant Operating Data and Current Regulatory Requirements

ENGINEER will review historic influent and effluent water quality data (provided by the City), operational data from the City's existing wastewater treatment plant and current and potential regulatory requirements. Based on this review, the ENGINEER will develop treated effluent quality objectives and project design criteria.

ENGINEER will provide the City with permitting assistance for the proposed expansion as an Additional Service (see below).

OWNER has determined that the design flow for the new plant will be 2.5 mgd average daily flow. ENGINEER will coordinate with OWNER to establish an appropriate 2-hour hydraulic peak flow factor, based on existing operating data.

##### Task 1.2 - Develop Process Alternatives

OWNER wants to evaluate options for the proposed biological treatment process, including sludge digestion, and disinfection for the proposed 2.5 mgd treatment plant.

Design alternatives should consider energy efficiency and operating costs. OWNER wishes to produce a Class B sludge quality, as defined by the TCEQ, in the selected process.

ENGINEER will develop process alternatives for the biological treatment and disinfection systems. Biological treatment system alternatives will include conventional activated sludge using fine bubble diffuser systems and the Carrousel process as offered by EIMCO. Alternative evaluation will include an assessment of sludge digestion required with each process. A preliminary estimate of the construction and operating costs of each alternative will be reported to the OWNER along with the advantages and disadvantages of each option.

ENGINEER will also evaluate disinfection alternatives. Disinfection alternatives will include using gaseous chlorine under vacuum and sodium hypochlorite addition. The existing facility currently uses gaseous chlorine delivered in ton cylinders. A preliminary estimate of the construction and operating costs of each alternative will be reported to the OWNER along with the advantages and disadvantages of each option.

Deliverable: Technical Memorandum presenting biological treatment and disinfection system process alternatives, the capital and operating costs and qualitative analysis of the alternatives.

## Exhibit C

### Task 1.3 - Develop Site Layout

The project site has been selected by the OWNER. The scope of work for this contract does not include an evaluation of the OWNER-selected site or any alternative sites. Environmental assessments of the proposed site are outside the scope of work for this contract authorization, but could be commissioned as an Additional Service. ENGINEER recommends that a Phase I environmental site assessment be conducted on the proposed site and the information provided to the ENGINEER prior to the Final Design Phase.

ENGINEER will develop a preliminary site layout for up to two potential process design alternatives.

### Task 1.4 - Pre-Design Workshop

ENGINEER shall conduct a pre-design workshop with the OWNER. The purpose of the workshop will be to:

1. Review effluent and permitting objectives and proposed design criteria
2. Discuss the City's objectives, if any, beyond the regulatory requirements
3. Discuss process alternatives, City preferences and the relative costs and benefits associated with the alternatives
4. Discuss major design issues related to the proposed wastewater treatment plant site, the proposed wastewater treatment process and the inter-relationship between the proposed and existing wastewater treatment plants

The Engineer will have representatives of the engineering disciplines (process mechanical, electrical, instrumentation and control) necessary to prepare a coordinated project design in attendance to discuss options available and the relative costs of pursuing each of the options. Discussions will include the design of the plant as well as detailed discussions regarding process, chemical feed, sludge dewatering, instrumentation and control. The Engineer shall prepare meeting notes and the notes will be distributed to all participants. The decisions reached at the pre-design workshop shall be incorporated into a bound Design Criteria Memorandum and followed throughout the design of the project unless specifically altered by the OWNER in writing.

### Task 1.5 - Coordinate Design with Existing WWTP Design Consultants

ENGINEER shall coordinate with other consultants, selected by City, responsible for the design of improvements at the City's existing North WWTP, adjacent to the proposed site for the new 2.5 mgd WWTP facility. Coordination will specifically focus on establishing design criteria for shared facilities, such as proposed headworks to be constructed at the existing North WWTP (not included in this contract), expanded sludge drying facilities to be constructed at the existing North WWTP (not included in this contract), and new

## Exhibit C

primary power supply and emergency generator at the proposed 2.5 mgd WWTP (included in this contract).

### **Task 1.6 - Develop a Preliminary Design Package (30%) for Review**

Based on the final effluent quality objectives and the Design Criteria Memorandum, the ENGINEER will develop a 30% Preliminary Design Package for review for review by the OWNER. This design package will include block flow diagrams, piping and instrumentation diagrams, a hydraulic profile, a proposed site layout, preliminary unit process layouts and one-line electrical diagrams. ENGINEER will also provide an order of magnitude cost estimate based on the 30% Preliminary Design Package. A preliminary estimate of power and other operational costs will also be generated.

This preliminary design package will include a list of technical specifications that will be required to complete the design, as well as a preliminary Control Strategy Narrative that will address process control and communication between the proposed wastewater treatment plant the City's existing wastewater treatment plant.

ENGINEER will conduct a review meeting with the OWNER to review the Preliminary Design Package. Any outstanding design issues will be discussed and addressed, and the ENGINEER will issue meeting minutes documenting any findings and/or design decisions made during the meeting.

Major project design elements will be considered frozen at the conclusion of this stage of the project. Once the OWNER and ENGINEER have reviewed and approved the meeting minutes of the review meeting, the Preliminary Engineering Task will be considered complete.

### **Task 2 Design - \$1,304,000**

#### **Task 2.1 - Preparation of Construction Drawings and Specifications**

Prepare final design drawings for incorporation in the Contract Documents showing the scope, extent and character of the work to be performed and furnished by Contractor. Prepare Technical Specifications (which will be prepared in conformance with the sixteen division format of the Construction Specifications Institute).

#### **Task 2.2 - Technical Support for Permitting**

Provide technical criteria, written descriptions and design data for use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

#### **Task 2.3 - Prepare an Opinion of Probable Construction Cost**

## Exhibit C

Prepare an Opinion of Probable Construction Cost for the construction project.

### **Task 2.4 – Prepare Contract Agreement and Associated Forms**

After consulting with the City Attorney concerning OWNER's desired format, prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents. ENGINEER shall modify documents in accordance with the recommendations of OWNER.

### **Task 2.5 – Coordinate Owner Review of Contract Documents, Drawings and Specifications**

ENGINEER shall furnish four copies of the above documents, Drawings and Specifications to the Owner at 60% and 90 % review milestones and review them with OWNER.

ENGINEER shall conduct review meetings with the OWNER at the 60% and 90% deliverable milestones. ENGINEER shall record and provide notes from the review meetings.

### **Task 2.6 – Bid Phase Services**

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization from OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conference, if any, and receive and process deposits for Bidding Documents. ENGINEER shall distribute plans and specifications from their office and keep a plan holders list.
2. Issue addenda as appropriate to clarify, correct or change the Bidding Documents.
3. ENGINEER reserves the right to issue electronic versions of the Bidding Documents, including all addenda, to potential Bidders in lieu of full-size drawings and bound contract documents and technical specifications, subject to OWNER approval.
4. Consult with OWNER as to acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
5. Attend a prebid meeting to present project to prospective bidders and respond to questions raised by prospective bidders.

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6. Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

The Bidding Phase will terminate and the services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

### Task 3 Construction Phase - \$378,700

General Construction Phase Services shall include:

#### Task 3.1 – General Administration of Construction Contract

ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

#### Task 3.2 – Visits to Site and Observation of Construction

In connection with observations of the work of Contractor while in progress:

- a. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. Such visits and observations by ENGINEER are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of observation of the work based on ENGINEER's exercise of professional judgment as assisted by the OWNER's Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. ENGINEER shall not be required to make more than 24 site visits during the construction phase under this scope of work.
- b. The purpose of ENGINEER's visits to the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to



## Exhibit C

provide for OWNER a greater degree of confidence that the completed work of Contractor will conform to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders (other than orders emanating from OWNER or ENGINEER with respect to the work, such as change orders) applicable to Contractor's furnishing and performing the work.

### **Task 3.3 – Disapproval of Defective Work**

During such visits on the basis of such observations, ENGINEER shall have authority and duty to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

### **Task 3.4 – Issuance of Clarifications, Interpretations and Field Orders**

ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

### **Task 3.5 – Review and Preparation of Change Orders and Work Change Directives**

ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required. If requested by OWNER, ENGINEER will be in attendance at the City Commission meeting to describe the necessity for the Change Order.

### **Task 3.6 – Review of Shop Drawings**

ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

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### Task 3.7 – Review of Contractor Proposed Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. ENGINEER'S effort to review "or-equal" materials or equipment shall be limited to one "or-equal" submittal per specification item. Effort to review more than one proposed "or equal" submittal per specification item will be considered outside the ENGINEER'S scope of work and additional cost shall be reimbursed to the OWNER by the Contractor.

### Task 3.8 – Inspections and Tests

ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, test or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

### Task 3.9 – Disagreements between OWNER and Contractor

ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and impartial to OWNER and Contractor to ensure the work complies with the requirements of the Contract Documents, and shall not be liable for the rendering of any decision made in good faith in such capacity.

### Task 3.10 -- Applications for Payment

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

- a. ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final

## Exhibit C

determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in Paragraph a. are expressly subject to the limitations set forth in Paragraph b. and other express or general limitations in the Agreement and elsewhere.

- b. By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

### **Task 3.11 – Review of Contractor's Completion Documents**

ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under Paragraph 6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

### **Task 3.12 – Substantial Completion Inspection**

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a Certificate of Substantial Completion to OWNER and Contractor. The Certificate of Substantial Completion shall only allow OWNER to begin

## Exhibit C

operation of the item constructed hereunder, but shall not constitute final acceptance of the work or Certificate of Final Completion.

### Task 3.13 – Final Notice of Acceptability of Work

ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of Paragraph 10.b.) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

### Task 3.14 – ENGINEER'S Completion Documents

ENGINEER shall utilize the marked-up contract drawings from the Contractor, with the assistance of the OWNER's representative, to provide Record Drawings of the completed Project. ENGINEER shall furnish one set of reproducible drawings and one set of prints of these revised drawings to the OWNER.

As an accommodation to the OWNER, ENGINEER agrees to provide OWNER an electronic copy of the Record Drawings for the project. The Record Drawings shall be provided in PDF format using Adobe Acrobat. OWNER is aware of the potential errors that may arise through the electronic copying of the disk. OWNER recognizes that the information contained in the electronic drawings may not include all information which is included in the Record Drawings. The hard copy of the Record Drawings containing the engineer's professional engineering stamp shall take precedence over the electronic drawings.

The electronic drawings are provided to OWNER "as is" and any use of the electronic drawings or the information contained in the electronic drawings is at the sole risk of the OWNER and without any liability or legal exposure to ENGINEER.

### Limitations of Responsibilities

ENGINEER agrees to inspect work and perform the duties specified in this contract in a reasonable manner, but does not guarantee the discovery of Contractor's failure to comply with the Contract Documents if a reasonable engineer in ENGINEER's position would not have discovered such failure.

### Duration of Construction Phase

The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

## Exhibit C

### Additional Services

These will be used only if necessary. Each Task will be negotiated separately as it is deemed necessary.

### Task 4 TPDES Permitting Assistance - \$30,000

ENGINEER will prepare a Major Amendment - TCEQ TPDES permit application for the Plant. The specific steps in this process are itemized below.

- a. Prepare Permit Application including Technical Report
- b. Review draft Permit Application with OWNER and incorporate comments
- c. Submit TPDES permit application to TCEQ for Review and Processing
- d. Respond to TCEQ Administrative Review comments
- e. Receive TCEQ Declaration of Administrative Completeness (1st 30-day Public Notice)
- f. Respond to TCEQ Technical Review comments
- g. Receive Draft Permit and TCEQ Declaration of Technical Completeness
- h. Respond with Comments to TCEQ on Draft Permit
- i. Accept Draft Permit
- j. File with Chief Clerk's Office (2nd 30-day Public Notice)
- k. Receive TCEQ Issuance of Final TPDES Permit

Deliverable: TPDES Major Amendment permit application.

### Task 5 Geotechnical Services - \$100,000

Engineer shall provide soil borings at the site and foundation recommendations for the wastewater treatment plant and appurtenances.

Engineer shall coordinate with the geotechnical engineer so that design requirements are communicated and that issues encountered during the geotechnical field work surveys are addressed. The Engineer shall work with the geotechnical engineer and investigate foundation alternatives that provide the most economical system to the Owner.

Geotechnical investigation will include soil borings along proposed pipeline routes.

### Task 6 Surveying Services - \$60,000

Engineer shall provide topographic survey of the proposed 21-acre wastewater treatment plant site and off-site improvements. Off-site improvements include a 100-foot wide pipeline and electrical corridor into the existing wastewater treatment facility. ENGINEER has assumed that bench-mark surveys and the topographic and utility survey conducted on the existing plant site will be provided by the consultants responsible for the design of various improvements at the existing North WWTP.

## Exhibit C

The topographic survey will locate all physical features including trees larger than 8-inches in diameter. Surveyor will identify existing exposed and OWNER-identified buried utilities.

The survey will be performed to allow the development of one foot contours to be used during the design of the water treatment plant and appurtenances. Survey will also include adequate off-site topographic data to develop a site drainage plan for the wastewater treatment plant site.

Engineer shall coordinate with the surveyor so that design requirements are communicated and that issues encountered during the field surveys are addressed.

### **Task 7 Resident Project Representative Services - \$705,000**

The purpose of the resident project representative (RPR) is to assist the Owner in inspecting and reviewing the Contractor's work to confirm that it is in compliance with the plans and contract documents. Furthermore, the purpose is to assist the Owner with the assimilation of documents generated during construction. This scope of work is for 20 months of construction.

The RPR is the Engineer's agent at the site and will act as directed by and under the supervision of the Engineer, and will confer with the Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with the Engineer and Contractor, keeping the City advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR will communicate with the City with the knowledge of and under the direction of Engineer.

Tasks of the RPR shall be as follows:

1. Review Contactor progress schedules.
2. Attend construction progress meetings.
3. Serve as the Engineer's liaison with the Contractor.
4. Assist in obtaining from Owner information required for proper execution of the work.
5. Conduct on-site observations of the Work in progress to assist Engineer in determining if the work is proceeding in accordance with the Contract Documents.
6. Prepare a daily report recording the Contractor's hours on the job site, weather conditions, data relative to questions, Work Change Directives, Change Orders or changed conditions.
7. Review Contractor applications for payment.
8. Verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents.
9. Completion:

## Exhibit C

- a) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b) Conduct a final inspection in the company of the Owner, Engineer and Contractor and prepare a final list of items to be completed or corrected.
- c) Observe whether all items on final list have been completed or corrected and make recommendations to the Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

### **Task 8 Construction Materials Testing - \$271,000**

The purpose of construction testing services is to confirm that the work being conducted by the Contractor is in accordance with the plans and specifications. The contract documents will contain a specification section that requires the Contractor to coordinate with the Owner's/Engineer's testing company for the tests required. Typical tests include compressive strength tests for concrete cylinders and in-place density tests. Concrete cylinder tests typically include cylinder breaks at 7-days and 28-days. In-place density tests include compactions tests for subgrade and base materials.

The scope of work for this contract authorization does not include budget or funding for the following Additional Services: Preparation of Operation and Maintenance Manuals, and Start-up and Testing services.

STANDARD FORM OF AGREEMENT  
BETWEEN

AUG 08 7808

OWNER AND ENGINEER

Miscellaneous Improvements at the City of Weslaco WTP

THIS IS AN AGREEMENT made as of 7/22, 2008 between <sup>M&K gpc</sup> City of Weslaco <sup>gpc</sup> ("OWNER") and Camp Dresser & McKee Inc. ("ENGINEER").

OWNER intends to perform improvements at the City of Weslaco Water Treatment Plant. The improvements include: recycle basin piping, water well improvements, installing tube settlers in the P2 sedimentation basins and P3 clarifiers, upgrading the P3 influent line, P3 filter gallery piping improvements, a new generator for the high service pumps, and adding firm capacity to the raw water pump station. (the "Project").

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

ARTICLE 1 - SCOPE OF SERVICES

- 1.1 ENGINEER agrees to perform for OWNER services as described in Exhibit A (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

ARTICLE 2 - TIMES FOR RENDERING SERVICES

- 2.1 The specific time period for the performance of ENGINEER's Services are set forth in Exhibit A.
- 2.2 If the specific periods of time for rendering services or specific dates by which services are to be completed are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance and compensation for ENGINEER's services shall be adjusted equitably.
- 2.3 If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised

ARTICLE 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with



respect to ENGINEER's services for the Project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and, as applicable to the Services, any other data relative to design or construction of the Project, all of which ENGINEER shall be entitled to rely upon.
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any defect or conformance in ENGINEER's Services or in the work of any Contractor.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

#### ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES

##### 4.1 Methods of Payment for Services of ENGINEER.

- 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit N/A.
- 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Invoices are due and payable on receipt.
- 4.1.3 IF OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

#### ARTICLE 5 – GENERAL CONDITIONS

##### 5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality.

##### 5.2 Opinions of Probable Construction Cost

ENGINEER's opinions of probable Construction Cost, as applicable to the Services, provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials,

equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, or when the Project will be constructed ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

### 5.3 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

### 5.4 Use of Documents

- 5.4.1 All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.4.2 OWNER may rely upon that data or information set forth on paper (also known as hard copies) that the OWNER receives from the ENGINEER by mail, hand delivery, or facsimile, are the items that the ENGINEER intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by the ENGINEER to the OWNER are furnished only for convenience, not reliance by the OWNER. Any conclusion or information obtained or derived from such electronic files will be at the OWNER's sole risk. In all cases, the original hard copy of the documents takes precedence over the electronic files.
- 5.4.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the OWNER agrees that it will perform acceptance tests or procedures within 60 days, after which the OWNER shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the ENGINEER.
- 5.4.4 When transferring documents in electronic media format, the ENGINEER makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the ENGINEER.
- 5.4.5 OWNER may make and retain copies of documents for information and reference in connection with use on the Project by OWNER. ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and other projects of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.

5.4.6 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.5 Controlling Law

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

Hidalgo County, Texas.

MJD/JS  
4-25-2008  
JPC  
8-15-08

5.6 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.7 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

5.8 Successors and Assigns

5.8.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.8.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.8.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.8.3. Unless expressly provided otherwise in this Agreement:

5.8.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

5.8.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.9 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time

by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.10 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.11 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

5.12 Environmental Site Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

5.13 Insurance

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property.

5.14 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.15 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.16 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.17 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.18 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.19 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.20 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

5.21 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.22 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. ~~if the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association.~~ In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

MMAS  
11-25-2008  
JMC  
5-15-08

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

ARTICLE 6 - DEFINITIONS

6.1 Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1.1 Services

The services to be performed for or furnished to OWNER by ENGINEER described in this Agreement.

6.1.2 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.1.3 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §v1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.1.4 Construction Cost - ♦

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided

♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

6.1.5 Documents

As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

6.1.6 Contractor - ♦

The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

6.1.7 ENGINEER's Subcontractor.

A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

6.1.8 Reimbursable Expenses.

The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.

6.1.9 Resident Project Representative - ♦

The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").

6.1.10 Standard General Conditions - ♦

The Standard General Conditions of the Construction Contract (No. N/A) of the Engineers Joint Contract Documents Committee.

6.1.11 Total Project Costs - ♦

The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

## ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

Exhibit A - Engineer's Services, Owner's Responsibilities, Time for Performance, Method of Payment, and Special Provisions.

Exhibit B - Duties, Responsibilities and Limitations of Authority of the Resident Project Representative.  
(Use when RPR Services are provided.)

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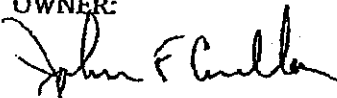
♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.  
Owner and Engineer – 2/2008

Exhibit C – City of Weslaco, Miscellaneous Improvements to the Surface WTP Engineering Scope of Work.

This Agreement (consisting of Pages 1 to 9 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:



By: Buddy de la Rosa  
Title: Mayor  
Date: 7-22-08

Address for giving notices:  
City of Weslaco  
255 S. Kansas  
Weslaco, Texas 78596

ENGINEER:



By: Mari Garza-Bird, P.E.  
Title: Associate  
Date: 7-21-2008

Address for giving notices:  
CDM  
1777 NE Loop 410, Suite 204 SUU  
San Antonio, Texas 78217  
P: 210-826-3200  
F: 210-826-8876

MSK  
OK

ATTEST



APPROVED AS TO FORM:

  
RAMON VELA, CITY ATTORNEY



**EXHIBIT A  
TO AGREEMENT BETWEEN  
OWNER AND ENGINEER  
(STUDY, REPORT, DESIGN AND CONSTRUCTION SERVICES)**

This is an exhibit attached to and made a part of the Agreement dated \_\_\_\_\_, 20\_\_\_\_, between City of Weslaco (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) for professional services.

**1.0 ENGINEER'S SERVICES**

**1.1 Study and Report Phase**

Upon this Agreement becoming effective, ENGINEER shall:

- 1.1.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.
- 1.1.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services which are not part of ENGINEER's Services, and assist OWNER in obtaining such data and services.
- 1.1.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.
- 1.1.4 Evaluate various alternate solutions available to OWNER as described herein, and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment best meet OWNER's requirements for the Project.
- 1.1.5 Prepare a report (the "Report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following: opinion of probable Construction Cost, allowances for contingencies including costs of design professional and related services based on information furnished by OWNER for allowances and other items and services included within the definition of Total Project Costs.
- 1.1.6 Furnish the Report to and review it with OWNER.
- 1.1.7 Revise the Report in response to OWNER's comments, as appropriate, and furnish final copies of the Report in the number set forth herein.
- 1.1.8 Submit the Report within the stipulated period indicated herein.
- 1.1.9 ENGINEER's Services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to review the portions of the Project specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.

The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 1.1 are amended and supplemented as follows:

Exhibit C - Task 1 contains the study and report phase scope of work.

1.2 Design Phase

- 1.2.1 Prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen-division format of the Construction Specifications Institute).
- 1.2.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.
- 1.2.3 Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER as a result of changes in scope, extent or character or design requirements of the Project.
- 1.2.4 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.2.5 Furnish five copies of the above documents, Drawings and Specifications to and review them with OWNER.
- 1.2.6 ENGINEER's services under the Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Design Phase.

The duties and responsibilities of ENGINEER during the Design Phase are amended and supplemented as follows:

Exhibit C - Task 2 contains the design phase of the scope of work.

1.3 Bidding or Negotiating Phase

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

- 1.3.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.

- 1.3.2 Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

- 1.3.3 Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 1.3.4 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.
- 1.3.5 The Bidding or Negotiating Phase will terminate and the Services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 1.3 are amended and supplemented as follows:

Exhibit C – Task 2 contains the bidding phase services for the scope of work.

1.4 Construction Phase  
During the Construction Phase:

1.4.1 General Administration of Construction Contract.  
ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

1.4.2 Visits to Site and Observation of Construction.  
In connection with observations of the work of Contractor while in progress:

1.4.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 1.4. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 1.4.2.2 and other express or general limitations in this Agreement and elsewhere.

1.4.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

1.4.2.3 Duties, Responsibilities and Authority of the Resident Project Representative are set forth in Exhibit B.

1.4.3 Defective Work.

During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

1.4.4 Clarifications and Interpretations; Field Orders.

ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

1.4.5 Change Orders and Work Change Directives.

ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

1.4.6 Shop Drawings

ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.4.7 Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and

determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

1.4.8 Inspections and Tests.

ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

1.4.9 Disagreements between OWNER and Contractor

ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.4.10 Applications for Payment.

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

1.4.10.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 1.4.10.1 are expressly subject to the limitations set forth in paragraph 1.4.10.2 and other express or general limitations in this Agreement and elsewhere.

1.4.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing

and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.4.11 Contractor's Completion Documents

ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 1.4.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

1.4.12 Substantial Completion

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

1.4.13 Final Notice of Acceptability of the Work

ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph 1.4.10.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

1.4.14 Limitation of Responsibilities

ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

1.4.15. Duration of Construction Phase

The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 1.4 are amended and supplemented as follows:

Exhibit C – Task 3 contains the construction phase services scope of work.

2.0 OWNER'S RESPONSIBILITIES

- 2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

- 2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;
- 2.1.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment;
- 2.1.3 Appropriate professional interpretation of all of the foregoing;
- 2.1.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
- 2.1.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;
- 2.1.6 Property descriptions;
- 2.1.7 Zoning, deed and other land use restrictions; and
- 2.1.8 Other special data or consultations not covered in Article 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

- 2.2 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.
- 2.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.
- 2.5 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.
- 2.6 Provide, as may be required for the Project:
  - 2.6.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
  - 2.6.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and
  - 2.6.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.
- 2.7 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

2.7.1 That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

2.7.2 That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 2.7.1 and 2.7.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

2.8 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

2.9 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

2.10 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

2.11 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 2.1, 2.2 and 2.4 through 2.11, inclusive) and other costs so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

2.12 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and Substantial Completion and final payment inspections.

2.13 Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.

2.14 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

### 3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

The anticipated duration for design is 9 months. The anticipated duration for construction is 12 months.

### 4.0 METHOD OF PAYMENT

Exhibit A - 1/2006  
Owner and Engineer-Study, Report, Design and Construction



The method of payment for Services rendered by ENGINEER shall be as set forth below:

Tasks 1, 2, and 3 as shown in Exhibit C are lump sum for a total fee of \$273,000.

All Task 4 Services, as shown in Exhibit C, will be negotiated on an "as needed" basis.

Task 4 services, as shown in Exhibit C, are hourly rates with a not to exceed upper limit of \$178,000.

Task 4 expenses, as shown in Exhibit C, will be reimbursed at cost.

5.0 **SPECIAL PROVISIONS**

OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

The following hourly rates will be used for Task 4 as shown in the billing table below.

**Hourly Billing Rate Table**

<b>Description</b>	<b>Hourly Rate</b>
Senior Technical Advisor	\$260.00
Associate	\$195.00
Principal	\$185.00
Senior Engineer	\$175.00
Staff Engineer	\$135.00
Graduate Engineer (EIT)	\$90.00
Senior Support Services (GIS / CADD)	\$95.00
Senior Administrative Services	\$85.00
Staff Support Services (Clerical)	\$60.00

**EXHIBIT B TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

**DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY  
OF THE RESIDENT PROJECT REPRESENTATIVE**

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on 20 between City of Weslaco (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the work of Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

**A. General**

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

**B. Duties and Responsibilities of RPR**

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. *Liaison:*
  - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
  - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. *Shop Drawings and Samples:*
  - a. Record date of receipt of Shop Drawings and Samples.
  - b. Receive Samples which are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
  - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - c. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

8. *Records:*

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

9. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

10. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

**C. Limitations of Authority by RPR**

**Resident Project Representative:**

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

## EXHIBIT C

### City of Weslaco Miscellaneous Improvements to the Surface WTP Engineering Scope of Work

#### Purpose of Project

The City of Weslaco intends to perform miscellaneous improvements to the existing surface water treatment plant. The improvements will include recycle basin piping, water well improvements, installing tube settlers in the P2 sedimentation basins and P3 clarifiers, upgrading the P3 influent line, P3 filter gallery piping improvements, a new generator for the high service pumps, and adding firm capacity to the raw water pump station. CDM will provide the engineering design for the listed facilities. The scope of work is broken down into Basic Design Services which include preliminary engineering, design, and construction phase services; and Additional Services which includes geotechnical engineering services, survey services, resident project representative services, and construction materials testing.

#### Basic Engineering Services

##### Task 1 Preliminary Engineering - \$65,000

###### Task 1.1 – Review Historic Raw Water Data, Existing Plant Operating Data and Current Regulatory Requirements

ENGINEER will review historic raw water quality data (provided by the City), operational data from the City's existing water treatment plant and current and potential regulatory requirements. Based on this review, the ENGINEER will develop treated water quality objectives and project design criteria.

###### Task 1.2 – Pre-Design Workshop

ENGINEER shall conduct a pre-design workshop with the OWNER. The purpose of the workshop will be to:

1. Review water quality objectives and proposed design criteria
2. Discuss the City's objectives, if any, beyond the regulatory requirements
3. Discuss process alternatives, City preferences and the relative costs and benefits associated with the alternatives
4. Discuss major design issues

The Engineer will have representatives of the engineering disciplines (process mechanical, electrical, instrumentation and architectural) necessary to prepare a coordinated project design in attendance to discuss options available and the relative costs of pursuing each of the options. The Engineer shall prepare meeting notes and the notes will be distributed to all participants. The decisions reached at the pre-design

## EXHIBIT C

workshop shall be incorporated into a bound Design Criteria Memorandum and followed throughout the design of the project unless specifically altered by the OWNER in writing.

### **Task 1.3 - Develop a Preliminary Design Package (30%) for Review**

Based on the treated water quality objectives and the Design Criteria Memorandum, the ENGINEER will develop a 30% Preliminary Design Package for review by the OWNER. This design package will include block flow diagrams, piping and instrumentation diagrams, a hydraulic profile, a proposed site layout, preliminary unit process layouts and one-line electrical diagrams. ENGINEER will also provide an order of magnitude cost estimate based on the 30% Preliminary Design Package. A preliminary estimate of power and other operational costs will also be generated.

This preliminary design package will also include a list of technical specifications that will be required to complete the design.

ENGINEER will conduct a review meeting with the OWNER to review the Preliminary Design Package. Any outstanding design issues will be discussed and addressed, and the ENGINEER will issue meeting minutes documenting any findings and/or design decisions made during the meeting.

Major project design elements will be considered frozen at this stage of the project. Once the OWNER and ENGINEER have reviewed and approved the meeting minutes of the review meeting, the Preliminary Engineering Task will be considered complete.

### **Task 2 Design - \$163,000**

#### **Task 2.1 - Preparation of Construction Drawings and Specifications**

Prepare final design drawings for incorporation in the Contract Documents showing the scope, extent and character of the work to be performed and furnished by Contractor. Prepare Technical Specifications (which will be prepared in conformance with the sixteen division format of the Construction Specifications Institute).

#### **Task 2.2 - Technical Support for Permitting**

Provide technical criteria, written descriptions and design data for use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

#### **Task 2.3 - Prepare an Opinion of Probable Construction Cost**

Prepare an Opinion of Probable Construction Cost for the construction project.

## EXHIBIT C

### Task 2.4 – Prepare Contract Agreement and Associated Forms

After consulting with the City Attorney concerning OWNER's desired format, prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents. ENGINEER shall modify documents in accordance with the recommendations of OWNER.

### Task 2.5 – Coordinate Owner Review of Contract Documents, Drawings and Specifications

ENGINEER shall furnish four copies of the above documents, Drawings and Specifications to the Owner at 90 % review milestone and review them with OWNER.

ENGINEER shall conduct review meetings with the OWNER at the 90% deliverable milestone. ENGINEER shall record and provide notes from the review meetings.

### Task 2.6 – Bid Phase Services

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization from OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conference, if any, and receive and process deposits for Bidding Documents. ENGINEER shall distribute plans and specifications from their office and keep a plan holders list.
2. Issue addenda as appropriate to clarify, correct or change the Bidding Documents.
3. ENGINEER reserves the right to issue electronic versions of the Bidding Documents, including all addenda, to potential Bidders in lieu of full-size drawings and bound contract documents and technical specifications, subject to OWNER approval.
4. Consult with OWNER as to acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
5. Attend a prebid meeting to present project to prospective bidders and respond to questions raised by prospective bidders.
6. Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.



## EXHIBIT C

ENGINEER's services under the Design Phase will be considered complete and will terminate upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

### Task 3 Construction Phase - \$45,000

General Construction Phase Services shall include:

#### Task 3.1 – General Administration of Construction Contract

ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

#### Task 3.2 – Visits to Site and Observation of Construction

In-connection with observations of the work of Contractor while in progress:

- a. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. Such visits and observations by ENGINEER are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of observation of the work based on ENGINEER's exercise of professional judgment as assisted by the OWNER's Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. ENGINEER shall not be required to make more than 24 site visits during the construction phase under this scope of work.
- b. The purpose of ENGINEER's visits to the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the

## EXHIBIT C

Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders (other than orders emanating from OWNER or ENGINEER with respect to the work, such as change orders) applicable to Contractor's furnishing and performing the work.

### **Task 3.3 – Disapproval of Defective Work**

During such visits on the basis of such observations, ENGINEER shall have authority and duty to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

### **Task 3.4 – Issuance of Clarifications, Interpretations and Field Orders**

ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

### **Task 3.5 – Review and Preparation of Change Orders and Work Change Directives**

ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required. If requested by OWNER, ENGINEER will be in attendance at the City Commission meeting to describe the necessity for the Change Order.

### **Task 3.6 – Review of Shop Drawings**

ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

## EXHIBIT C

### Task 3.7 – Review of Contractor Proposed Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. ENGINEER'S effort to review "or-equal" materials or equipment shall be limited to one "or-equal" submittal per specification item. Effort to review more than one proposed "or equal" submittal per specification item will be considered outside the ENGINEER'S scope of work and additional cost shall be reimbursed to the OWNER by the Contractor.

### Task 3.8 – Inspections and Tests

ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, test or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

### Task 3.9 – Disagreements between OWNER and Contractor

ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and impartial to OWNER and Contractor to ensure the work complies with the requirements of the Contract Documents, and shall not be liable for the rendering of any decision made in good faith in such capacity.

### Task 3.10 – Applications for Payment

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

- a. ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final

## EXHIBIT C

determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in Paragraph a. are expressly subject to the limitations set forth in Paragraph b. and other express or general limitations in the Agreement and elsewhere.

- b. By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

### **Task 3.11 – Review of Contractor's Completion Documents**

ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under Paragraph 6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

### **Task 3.12 – Substantial Completion Inspection**

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a Certificate of Substantial Completion to OWNER and Contractor. The Certificate of Substantial Completion shall only allow OWNER to begin

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operation of the item constructed hereunder, but shall not constitute final acceptance of the work or Certificate of Final Completion.

### Task 3.13 – Final Notice of Acceptability of Work

ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of Paragraph 10.b.) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

### Task 3.14 – ENGINEER'S Completion Documents

ENGINEER shall utilize the marked-up contract drawings from the Contractor, with the assistance of the OWNER's representative, to provide Record Drawings of the completed Project. ENGINEER shall furnish one set of reproducible drawings and one set of prints of these revised drawings to the OWNER.

As an accommodation to the OWNER, ENGINEER agrees to provide OWNER an electronic copy of the Record Drawings for the project. The Record Drawings shall be provided in PDF format using Adobe Acrobat. OWNER is aware of the potential errors that may arise through the electronic copying of the disk. OWNER recognizes that the information contained in the electronic documents may not include all information which is included in the Record Drawings. The hard copy of the Record Drawings containing the engineer's professional engineering stamp shall take precedence over the electronic drawings.

The electronic drawings are provided to OWNER "as is" and any use of the electronic drawings or the information contained in the electronic drawings is at the sole risk of the OWNER and without any liability or legal exposure to ENGINEER.

### Limitations of Responsibilities

ENGINEER agrees to inspect work and perform the duties specified in this contract in a reasonable manner, but does not guarantee the discovery of Contractor's failure to comply with the Contract Documents if a reasonable engineer in ENGINEER's position would not have discovered such failure.

### Duration of Construction Phase

The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

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### **Additional Services**

These Services will only be used if necessary. Each Task will be negotiated separately as it is determined necessary.

### **Task 4 Geotechnical Engineering Services - \$15,000**

Engineer shall provide a soil boring at the site and a foundation recommendation for the new generator. Geotechnical investigation will include soil borings along the proposed recycle and influent piping routes.

Engineer shall coordinate with the geotechnical engineer so that design requirements are communicated and that issues encountered during the geotechnical field work surveys are addressed.

### **Task 5 Surveying Services - \$40,000**

Engineer shall provide topographic survey of the water treatment plant site. The topographic survey will locate all physical features including trees larger than 8-inches in diameter. Surveyor will identify existing exposed and buried utilities.

The survey will be performed to allow the development of one foot contours to be used during the design of the miscellaneous improvements to the water treatment plant.

Engineer shall coordinate with the surveyor so that design requirements are communicated and that issues encountered during the field surveys are addressed.

### **Task 6 – Resident Project Representative Services - \$100,000**

The purpose of the resident project representative (RPR) is to assist the Owner in inspecting and reviewing the Contractor's work to confirm that it is in compliance with the plans and contract documents. Furthermore, the purpose is to assist the Owner with the assimilation of documents generated during construction. This scope of work is for 12 months of construction.

The RPR is the Engineer's agent at the site and will act as directed by and under the supervision of the Engineer, and will confer with the Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with the Engineer and Contractor, keeping the City advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR will communicate with the City with the knowledge of and under the direction of Engineer.

Tasks of the RPR shall be as follows:

1. Review Contactor progress schedules.

## EXHIBIT C

2. Attend construction progress meetings.
3. Serve as the Engineer's liaison with the Contractor.
4. Assist in obtaining from Owner information required for proper execution of the work.
5. Conduct on-site observations of the Work in progress to assist Engineer in determining if the work is proceeding in accordance with the Contract Documents.
6. Prepare a daily report recording the Contractor's hours on the job site, weather conditions, data relative to questions, Work Change Directives, Change Orders or changed conditions.
7. Review Contractor applications for payment.
8. Verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents.
9. Completion:
  - a) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
  - b) Conduct a final inspection in the company of the Owner, Engineer and Contractor and prepare a final list of items to be completed or corrected.
  - c) Observe whether all items on final list have been completed or corrected and make recommendations to the Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

### **Task 7 – Construction Materials Testing - \$23,000**

The purpose of construction testing services is to confirm that the work being conducted by the Contractor is in accordance with the plans and specifications. The contract documents will contain a specification section that requires the Contractor to coordinate with the Owner's/Engineer's testing company for the tests required. Typical tests include compressive strength tests for concrete cylinders and in-place density tests. Concrete cylinder tests typically include cylinder breaks at 7-days and 28-days. In-place density tests include compactions tests for subgrade and base materials.

The scope of work for this contract authorization does not include budget or funding for the following Additional Services: Preparation of Operation and Maintenance Manuals, and Start-up and Testing services.

**AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER**

This Agreement is made and entered into the <sup>YA</sup> 16 day of December, 2008, by and between the City of Weslaco, a home-ruled municipal corporation located at 255 S. Kansas Ave., Weslaco, Hidalgo County Texas, hereinafter called OWNER and CDM Constructors Inc., 3050 Post Oak Blvd, Suite 300, Houston TX 77056, hereinafter called CONSTRUCTION MANAGER.

WHEREAS, the OWNER has determined it is in the best interest of the OWNER to utilize the Construction Management at Risk approach to construct the Project; and

WHEREAS, CONSTRUCTION MANAGER provides such Construction Management Services to clients;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, OWNER and CONSTRUCTION MANAGER agree as follows:

**ARTICLE 1 – THE PROJECT TEAM AND EXTENT OF AGREEMENT**

The CONSTRUCTION MANAGER agrees to furnish or arrange for the construction services set forth herein and agrees to furnish project management and administration and superintendence, and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interests of the OWNER.

- 1.1. **The Project Team.** The CONSTRUCTION MANAGER, the OWNER and the CONSTRUCTION MANAGER's consultants and subcontractors, collectively called the "Project Team," shall work cooperatively through construction completion.
- 1.2. **Extent of Agreement.** The Contract Documents represent the entire agreement between the OWNER and the CONSTRUCTION MANAGER and supersede all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both OWNER and CONSTRUCTION MANAGER. While the OWNER may issue separate purchase orders to CONSTRUCTION MANAGER to satisfy OWNER's purchasing requirements, the terms and conditions of any such purchase orders issued after the date of this Agreement shall be deemed to be void and the terms and conditions of this Agreement shall be deemed substituted therefor.
- 1.3. **Definitions.**
  - 1.3.1. The Project is an upgrade and expansion to the Weslaco Northside Wastewater Treatment Plant described in further detail in Exhibit "A".
  - 1.3.2. The Work is the construction management and construction services required to complete the Project.

**ARTICLE 2 – CONSTRUCTION MANAGER'S RESPONSIBILITIES**

- 2.1 **CONSTRUCTION MANAGER's Services.** CONSTRUCTION MANAGER shall furnish through its own employees or engage subcontractors or subconsultants to furnish the following services for execution and completion of the Agreement, which shall constitute the "Work."



- 2.1.1. The CONSTRUCTION MANAGER will secure on behalf of the OWNER any construction building permits necessary for the construction of the Project.
- 2.1.2. The CONSTRUCTION MANAGER will provide the OWNER with a preliminary schedule for the estimated construction of the Project. This Schedule shall indicate the dates for the starting and completion of the various stages of the construction, and shall contain the necessary information to allow the OWNER to monitor the progress of the Work. It shall be revised as required by the conditions of the Work and for those conditions and events which are beyond the CONSTRUCTION MANAGER's control.
  - 2.1.2.1. The CONSTRUCTION MANAGER's total liability to the OWNER for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way relating to the Project, the site, CONSTRUCTION MANAGER's services or work, or this Agreement, from any cause or causes, including but not limited to the CONSTRUCTION MANAGER's negligence, errors, omissions, breaches of warranty or contract or strict liability shall not exceed the total amount paid by the OWNER to the CONSTRUCTION MANAGER under this Agreement.
- 2.1.3. The CONSTRUCTION MANAGER will provide all materials and equipment, supervision, inspection, testing, labor, tools, construction equipment and specialty items necessary to execute and complete construction of the Project.
- 2.1.4. The CONSTRUCTION MANAGER shall take necessary precautions for the safety of its employees on the Work, and shall comply with all applicable provisions of federal, state and municipal safety laws. CONSTRUCTION MANAGER shall include provisions in all subcontracts which require its subcontractors to be responsible for the safety of their employees on the Work, and to comply with all applicable provisions of federal, state and municipal safety laws. It is agreed that the CONSTRUCTION MANAGER shall have no responsibility for the abatement of safety hazards resulting from work at the job site carried on by the OWNER's separate contractors, or by the OWNER or persons for whom the OWNER is responsible. OWNER will comply with, and agree to cause any such separate contractors or persons to comply fully with all applicable provisions of federal, state and municipal safety laws and regulations.
- 2.1.5. The CONSTRUCTION MANAGER shall keep the premises of the Project free from accumulation of waste materials caused by the CONSTRUCTION MANAGER's operations. At the completion of the Work, the CONSTRUCTION MANAGER shall remove from the Project the CONSTRUCTION MANAGER's tools, surplus materials, construction equipment, and machinery.
- 2.1.6. The CONSTRUCTION MANAGER shall prepare Change Orders for the OWNER's approval and execution in accordance with this Agreement.
- 2.1.7. The CONSTRUCTION MANAGER shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction. These shall be delivered to the OWNER upon completion of the Project and final payment.
- 2.1.8. The CONSTRUCTION MANAGER's scope of services is set forth in Exhibit A attached hereto and made a part of this Agreement.
- 2.1.9. The CONSTRUCTION MANAGER's services shall not include expressly or by implication any

analysis, determination or opinion as to whether the OWNER is in compliance with federal, state or local laws, statutes, ordinances or regulations.

- 2.1.10. Unless expressly stated otherwise herein, the CONSTRUCTION MANAGER's services shall not include directly or indirectly storing, arranging for or actually transporting, disposing, treating or monitoring hazardous substances, hazardous materials, hazardous waste or hazardous oils.
- 2.2. Standards and Completion.

2.2.1. The CONSTRUCTION MANAGER agrees that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, and that all construction work will be of good quality, free from improper workmanship and defective materials. CONSTRUCTION MANAGER will not be responsible, however, for defects caused by OWNER modifications, abuse, and/or improper maintenance or operation. The CONSTRUCTION MANAGER agrees to correct all work performed by it under this Agreement which proves to be defective in material or workmanship within a period of six (6) months after completion of the Work as defined in Paragraph 2.2.1.1 provided that OWNER furnishes written notice of such defect within such six (6) month period. CONSTRUCTION MANAGER provides no warranty, express or implied, for OWNER-furnished equipment or equipment, accessories and parts manufactured by others. However, any warranty or guarantee obtained by CONSTRUCTION MANAGER from any such manufacturer shall be deemed to have been obtained for the benefit of OWNER and will be assigned to OWNER. The foregoing standards and warranties are the sole warranties extended by CONSTRUCTION MANAGER and are in lieu of all other warranties express or implied, including but not limited to, the implied warranties of merchantability and fitness for purpose.

2.2.1.1. Unless otherwise expressly noted, the term completion in this Agreement shall mean substantial completion. Substantial completion is the stage of progress when the Work or a designated portion thereof is sufficiently complete in accordance with this Agreement so that the OWNER can occupy or utilize the Work for its intended use. The contract time is the time within which the CONSTRUCTION MANAGER is to achieve substantial completion of the Work, subject to adjustments as set forth in this Agreement.

2.2.2. The CONSTRUCTION MANAGER will secure required certificates of inspection, testing or approval required for building construction and deliver them to the OWNER.

2.2.3. The CONSTRUCTION MANAGER will not be responsible for any errors or omissions contained in or omitted from any certificates and/or independent analyses of work conducted by and/or information provided by independent laboratories or other independent contractors retained by the CONSTRUCTION MANAGER in connection with the CONSTRUCTION MANAGER's services provided to the Owner.

2.2.4. The CONSTRUCTION MANAGER will collect all equipment manuals and deliver them to the OWNER.

### ARTICLE 3 - OWNER'S RESPONSIBILITIES

- 3.1. The OWNER shall provide full information regarding its requirements for the Project.
- 3.2. The OWNER shall designate a representative who shall be fully acquainted with the Project and

have full authority to promptly approve changes in the scope of the Project, promptly render approvals and decisions, and furnish information expeditiously and in time to meet the dates set forth in the Schedule. The OWNER's designated representative is the City Manager .

- 3.3. The OWNER shall furnish, for the site of the Project, topographical surveys describing the physical characteristics; soils reports and subsurface investigations; legal limitations; utility locations; and a legal description, including a property survey and Project benchmark. The OWNER agrees to assume responsibility for personal and/or property damage due to CONSTRUCTION MANAGER's interference with subterranean structures such as pipes, tanks and utility lines that are not correctly shown on the documents or that are not contained in written information provided by OWNER to CONSTRUCTION MANAGER prior to the commencement of the Work.
- 3.4. The OWNER shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, connection, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5. The OWNER shall furnish such legal services as may be necessary for providing the items set forth in Paragraph 3.4. and such auditing services as may be required.
- 3.6. If the OWNER becomes aware of any fault or defect in the Work or nonconformance with the Drawings or Specifications, it shall give prompt written notice thereof to the CONSTRUCTION MANAGER.
- 3.7. OWNER shall bear the cost of any bonds that it may require CONSTRUCTION MANAGER to maintain in connection with the Project.
- 3.8. The services and information required by the above paragraphs shall be furnished with reasonable promptness at OWNER's expense. The CONSTRUCTION MANAGER shall be entitled to rely upon the accuracy and the completeness of all such information provided by the OWNER.
- 3.9. The OWNER shall furnish reasonable evidence satisfactory to the CONSTRUCTION MANAGER, prior to signing this Agreement, or upon written request of the CONSTRUCTION MANAGER from time to time thereafter, that sufficient funds are available and committed to pay for CONSTRUCTION MANAGER's total estimated charges for the Work. Whether or not the CONSTRUCTION MANAGER elects to proceed with work without having received such evidence, CONSTRUCTION MANAGER may thereafter stop work upon fifteen (15) days' prior written notice if such evidence has not been furnished within a reasonable time after any such request.
- 3.10. The OWNER shall have no contractual obligation to the CONSTRUCTION MANAGER's subcontractors and subconsultants and shall communicate with such subcontractors and subconsultants only through the CONSTRUCTION MANAGER.
- 3.11. The OWNER shall pay for all utility connection fees and special facility charges rendered by utilities for connection of permanent utility services to the Project.
- 3.12. The OWNER shall be responsible for the long-term storage and disposal of waste materials generated as a result of sampling, pilot testing, and/or monitor well construction and development. CONSTRUCTION MANAGER shall place such waste materials in containers for temporary storage on site consistent with industry practice.

- 3.13. The OWNER shall sign any and all required manifests relating to the generation, transportation, storage, treatment and disposal of all wastes arising out of or related to the Project and/or the Work.

#### ARTICLE 4 – SUBCONTRACTS

- 4.1. Selection of Subcontractors. All portions of the Work that the CONSTRUCTION MANAGER does not perform with its own forces shall be performed under subcontracts. The CONSTRUCTION MANAGER shall select competent Subcontractors and shall be responsible for the management of the Subcontractors' performance of their work.

#### ARTICLE 5 – CONTRACT TIME SCHEDULE AND SUBSTANTIAL COMPLETION

##### 5.1. Contract Time.

- 5.1.1. The Work to be performed under this Agreement shall be performed in accordance with the Schedule provided pursuant to Exhibit A.
- 5.1.2. The term "day" as used in this Agreement shall mean calendar day, unless otherwise specifically designated.

##### 5.2 Delays.

- 5.2.1. If the CONSTRUCTION MANAGER is delayed at any time in the progress of the Project by any act of the OWNER, or any separate contractor employed by the OWNER or by the action of any governmental agency or regulatory body, or by change orders in the Project, or by labor disputes, fire, unusual delay in transportation, unusual delay in issuance of building permits or zoning or utility services, unusual delay or shortages in material supplies, adverse weather conditions not reasonably anticipatable, unavoidable casualties, acts of God, or any other causes beyond the CONSTRUCTION MANAGER's reasonable control, then the time within which the Work is to be completed shall be adjusted accordingly.
- 5.2.2. If CONSTRUCTION MANAGER is delayed by any act of OWNER or by any separate contractor employed by OWNER or for any other cause for which the OWNER is responsible, then in addition to an extension of the contract time, CONSTRUCTION MANAGER will be compensated for all costs which it incurs as a result of such delay, and a change order will be issued therefor.

#### ARTICLE 6 – CHANGES IN THE PROJECT

##### 6.1. Change Orders.

- 6.1.1. Any work not contained in the scope of services set forth in Exhibit A shall be a change and shall be performed by CONSTRUCTION MANAGER only pursuant to a written Change Order to this Agreement signed by OWNER and CONSTRUCTION MANAGER. Such a Change Order may increase or decrease the Work within the general scope of this Agreement. If this Change Order causes an increase in the cost of the Work, or of the time required for the performance of the Work, CONSTRUCTION MANAGER shall be paid a lump sum acceptable to both parties and/or shall be granted an extension of the contract time.

- 6.1.2. The proposal document may identify specific items which are not included in the Contract Price. The Work included in this Agreement shall be limited to that work specifically set forth in Exhibit A. The performance or furnishing of any such items by CONSTRUCTION MANAGER that are not included in the scope of services set forth in Exhibit A shall be pursuant to a Change Order issued in accordance with Paragraph 6.1.1.
- 6.1.3. In the event OWNER requests CONSTRUCTION MANAGER to develop information necessary for the consideration of a change in the Project, and such a change is not adopted, OWNER shall reimburse CONSTRUCTION MANAGER for the costs which it incurs in connection with such efforts.
- 6.2. **Concealed Conditions.** If concealed or unknown conditions that affect the performance of the Work are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for under this Agreement, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed, and upon claim made by the CONSTRUCTION MANAGER, the Contract Price and Schedule shall be equitably adjusted by Change Order to reflect additions and/or deductions to the cost and time required which result from such concealed or unknown conditions.
- 6.3. **Regulatory Changes.** The CONSTRUCTION MANAGER shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to the date of this Agreement

## **ARTICLE 7 – PAYMENTS TO THE CONSTRUCTION MANAGER**

### **7.1. Payments**

- 7.1.1. The type and form of compensation for CONSTRUCTION MANAGER shall be as specified in Exhibit A and as further defined in Exhibit C, Schedule of Values.
- 7.1.2. CONSTRUCTION MANAGER shall submit to the OWNER monthly invoices covering the period ending on the last day of the preceding month which shall indicate the total amount due to the CONSTRUCTION MANAGER for work performed for the preceding month. The OWNER shall have the right of inspection and verification of CONSTRUCTION MANAGER's invoice and shall have five (5) days within which to approve the invoice.
- 7.1.3. If the OWNER fails to make any payment due CONSTRUCTION MANAGER for services and expenses within thirty (30) days after receipt of CONSTRUCTION MANAGER's statement therefor, the amount due CONSTRUCTION MANAGER shall include an additional charge of one (1%) percent per month of all amounts due but not paid after said thirtieth day. As an additional remedy, CONSTRUCTION MANAGER may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until CONSTRUCTION MANAGER has been paid in full for all amounts due for services, expenses and charges.
- 7.2. **Title Free of Liens.** The CONSTRUCTION MANAGER agrees that title to all Work, including materials and equipment incorporated in the Project covered by any invoice will pass to the OWNER upon receipt of payment of the full amount of CONSTRUCTION MANAGER's invoice therefor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as Liens. CONSTRUCTION MANAGER, at its own expense, shall indemnify, defend and save

harmless OWNER against Liens filed on the property of OWNER by subcontractors, materialmen or suppliers of CONSTRUCTION MANAGER for amounts due them from CONSTRUCTION MANAGER for Work, the cost of which has been paid by OWNER to CONSTRUCTION MANAGER.

7.3. Waiver of Claims. The making of final payment shall constitute a waiver of all claims by OWNER except those arising from:

7.3.1. Unsettled liens.

7.3.2. Defects in materials or workmanship appearing after final inspection.

7.3.3. Any breach of continuing obligations in this Agreement on the part of CONSTRUCTION MANAGER.

## ARTICLE 8 - INDEMNITY AND INSURANCE

### 8.1. Indemnity.

8.1.1. The CONSTRUCTION MANAGER, in consideration of the sum of \$100 paid by the OWNER and other valid consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to indemnify and hold the OWNER harmless from all claims and suits for damages arising from personal injuries, including death, injury or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom to the extent caused by the negligence of the CONSTRUCTION MANAGER, and from all judgments recovered therefor, and from all expenses for defending claims or suits, including court costs and attorney's fees, resulting therefrom. CONSTRUCTION MANAGER shall have no duty to indemnify OWNER hereunder against claims arising as a result of OWNER's sole or contributing negligence or the sole or contributing negligence of any other party. Notwithstanding any other provision of this Agreement to the contrary, neither party shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

8.1.2. Upon and after final completion of the Project, OWNER, in consideration of the sum of \$100 paid by the CONSTRUCTION MANAGER and other valid consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to indemnify and hold the CONSTRUCTION MANAGER harmless from all claims and suits for damages arising from personal injuries or damage to property, and from all judgments recovered therefor, and from all expenses for defending such claims or suits resulting from the OWNER's negligence, including but not limited to court costs and attorney's fees, which result from the OWNER's negligent use, operation or maintenance of the facilities, equipment or materials provided by CONSTRUCTION MANAGER under this Agreement.

8.2. CONSTRUCTION MANAGER's Insurance. The CONSTRUCTION MANAGER shall purchase and maintain the following insurance to cover CONSTRUCTION MANAGER's performance under this Agreement:

8.2.1. Workers' Compensation insurance in full compliance with workers' compensation laws of the states within which any part of the work is to be performed, together with employer's

liability coverage with minimum limits of liability in the amount of \$500,000 for each occurrence.

- 8.2.2. Comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles with the following minimum limits of liability:

Combined single limit - \$1,000,000 each occurrence and \$2,000,000 aggregate

- 8.2.3. Comprehensive general liability insurance including Independent Contractor's coverage with the following minimum limits of liability:

Combined single limit - \$1,000,000 each occurrence and \$2,000,000 aggregate

The CONSTRUCTION MANAGER's comprehensive general liability policy shall also include blanket contractual liability coverage.

- 8.3. **Certificates.** CONSTRUCTION MANAGER shall furnish to OWNER promptly following the execution of this Agreement, certificates evidencing the maintenance of said insurance. The certificates shall provide that thirty (30) days' written notice shall be given to OWNER before the insurance policies noted herein are changed or canceled. Insurance certificates shall be attached as Exhibit(s) B hereto.

- 8.4. **OWNER's Liability Insurance.** The OWNER shall be responsible for purchasing liability insurance to protect the OWNER against claims which may arise from operations under this Project.

#### ARTICLE 9 - TERMINATION OF THE AGREEMENT

- 9.1. **Termination by OWNER for Cause.** If the CONSTRUCTION MANAGER persistently fails or neglects to carry out the Work in accordance with this Agreement, the OWNER may give written notice that the OWNER intends to terminate this Agreement. If the CONSTRUCTION MANAGER fails to correct or to take steps to correct the defaults, failure or neglect cited by the OWNER in such notice within seven (7) days after being given such notice, the OWNER may then give a second written notice and, after an additional seven (7) days if the CONSTRUCTION MANAGER fails to correct or to take steps to correct as aforesaid, the OWNER may make good such deficiencies and may deduct the cost thereof from payments due the CONSTRUCTION MANAGER or, at the OWNER's option, may terminate the employment of the CONSTRUCTION MANAGER, take possession of the site and finish the Work by whatever method the OWNER may deem expedient.
- 9.2. **Termination by OWNER Without Cause.** In addition to termination under Article 9.1, OWNER may terminate this Agreement without cause upon thirty (30) days' written notice to CONSTRUCTION MANAGER. Upon such termination, OWNER shall reimburse the CONSTRUCTION MANAGER for any unpaid portions of the Contract Price due it under Article 7 for the Work to date of termination. In addition, OWNER shall also pay to the CONSTRUCTION MANAGER fair compensation, either by purchase or rental at the election of the OWNER, for any equipment retained. In case of such termination of this Agreement, the OWNER shall further assume and become liable for obligations, commitments and unsettled claims that the CONSTRUCTION MANAGER has previously undertaken or incurred in good faith in connection with said Work, actual cancellation penalties for outstanding contracts and undelivered materials or equipment on orders, and any demobilization costs, plus 10% of such costs as additional CONSTRUCTION MANAGER's fee. The CONSTRUCTION MANAGER shall, as a condition of

receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as the OWNER may require for the purpose of fully vesting in the OWNER the rights and benefits of the CONSTRUCTION MANAGER under such obligations or commitments.

9.2.1. **Permanent Abandonment.** In the event of permanent abandonment of the Project, the OWNER may terminate this Agreement upon thirty (30) days' prior written notice to the CONSTRUCTION MANAGER. In such event, the OWNER shall pay CONSTRUCTION MANAGER for all amounts owed under Article 7 for work performed or labor, materials or equipment furnished, and for any proven loss or damages sustained by CONSTRUCTION MANAGER including but not limited to loss upon materials, equipment, tools and construction equipment and machinery.

9.2.2. **Termination by CONSTRUCTION MANAGER.** If the OWNER fails to make payment when due, in addition to any other remedies in this Agreement or provided by law, CONSTRUCTION MANAGER may give written notice of its intent to terminate this Agreement for non-payment. If the CONSTRUCTION MANAGER fails to receive full payment of amounts due within seven (7) days after such notice to the OWNER, then CONSTRUCTION MANAGER may give a second written notice that the Agreement will terminate in seven (7) days if the CONSTRUCTION MANAGER does not receive payment in full for all amounts due prior to the expiration of such seven (7) day period. In the event of such termination, the CONSTRUCTION MANAGER may recover from the OWNER payment for all work executed and for proven losses sustained, including but not limited to losses upon materials, equipment, tools and construction equipment and machinery plus 20% of all such costs as CONSTRUCTION MANAGER's additional fee.

#### ARTICLE 10 -- MISCELLANEOUS

- 10.1. **Successors and Assigns.** This Agreement shall be binding on the successors, assigns, and legal representatives of the OWNER or CONSTRUCTION MANAGER. Neither party shall assign, sublet or transfer an interest in the Agreement without the written consent of the other.
- 10.2. **Use of Documents.** The drawings, specifications and other documents furnished by the CONSTRUCTION MANAGER are instruments of service and, except by written agreement executed by the CONSTRUCTION MANAGER relating to use, liability and compensation therefore, shall not be used by the OWNER on other projects, for additions to this Project or for completion of this Project by others unless the CONSTRUCTION MANAGER is terminated for cause under this Agreement.
- 10.3. **Status of CONSTRUCTION MANAGER.** Nothing contained in this Agreement shall be construed or interpreted as requiring CONSTRUCTION MANAGER to assume the status of a generator, storer, operator, transporter, treater, or disposal facility as those terms appear within the Resource Conservation Recovery Act, 42USCA, Section 6901, et seq. (RCRA), or within any other federal or state statute of similar effect governing the treatment, storage, transportation or disposal of waste.
- 10.4. **Copyrights.** Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the CONSTRUCTION MANAGER's common law copyrights or other reserved rights.



**10.5. Reporting Requirements.** To the extent required by law, OWNER shall promptly report regulated conditions, including without limitation, the discovery of releases of hazardous substances, at the site to the appropriate public authorities in accordance with applicable law.

**10.6. Governing Law.** This Agreement shall be governed by the law in effect at the location of this Project.

**10.7. Notices.** Except as written elsewhere in this Agreement, all written communications to OWNER and CONSTRUCTION MANAGER shall be sent with distribution to the recipient as set out below.

**1. OWNER**

City of Weslaco  
255 S. Kansas Ave.  
Weslaco, Texas 78596

Attn: Buddy de la Rosa, Mayor

**2. CONSTRUCTION MANAGER**

CDM Constructors Inc.,  
3050 Post Oak Blvd, Suite 300  
Houston TX 77056

Attn: Paul R. Shea, President

**10.8. UNPAID INVOICES**

If OWNER, for any reason, fails to make payment due CONSTRUCTION MANAGER for services and expenses within thirty days after receipt of CONSTRUCTION MANAGER's invoice therefore, the amounts due CONSTRUCTION MANAGER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, CONSTRUCTION MANAGER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until CONSTRUCTION MANAGER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay CONSTRUCTION MANAGER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by CONSTRUCTION MANAGER to collect properly due payments.

**10.9. Partial Invalidity.** The invalidity of any part or portion of this Agreement shall not affect or impair in any way the validity, enforceability or effect of the remaining provisions hereof. In the event any provision herein is found to be invalid, then such provision shall be deemed to be deleted and all other provisions in the Agreement will remain in full force and effect.

**10.10. Entire Agreement.** The documents which comprise the entire Agreement between OWNER and CONSTRUCTION MANAGER concerning the Work (referred to herein as the Contract Documents) consist of the following:

1. This Agreement (pages 1 to 11 inclusive).

2. Exhibits:

A. Scope of Services and Compensation (pages 1 through 15)

- B. Insurance Certificates
- C. Schedule of Values

There are no documents other than those listed above in this Article 10.10. This Agreement may only be amended, modified, or supplemented by written agreement duly executed by OWNER and CONSTRUCTION MANAGER.

IN WITNESS WHEREOF, the parties hereto have read the foregoing, understand completely these terms and conditions, and willingly enter into this Agreement.

WITNESS our hands and seals this 18<sup>th</sup> day of December, 2008.

CITY OF WESLACO  
Buddy de la Rosa R.Th.  
Buddy de la Rosa, Mayor

ATTEST:

Amanda C. Elizondo  
Amanda C. Elizondo, City Secretary

APPROVED AS TO FORM:

Ramon Vela  
RAMON VELA, City Attorney

CDM Constructors Inc.

Peter T. Bailey  
Paul R. Shea, President  
PETER T. BAILEY, SENIOR V.P.

**EXHIBIT A**  
**DECEMBER 16, 2008**

**SCOPE OF WORK, TIME AND SCHEDULE, COMPENSATION AND INVOICING FOR  
CONSTRUCTION MANAGEMENT AT RISK FOR WESLACO NORTHSIDE  
WASTEWATER TREATMENT PLANT REHABILITATION, UPGRADES AND  
EXPANSION**

**1.0 Scope of Work**

This scope of work is predicated on an upgrade and expansion to the Weslaco Northside Wastewater Treatment Plant being managed and designed by the following key stakeholders: CDM Constructors Inc. (herein referred to as CCI) as CMAR Firm; CDM Inc as Program Manager; Half Associates, Inc. as Designer of Record for the headworks facilities; CDM Inc as Designer of Record of the main portions of the WWTP; Sigler, Winston, Greenwood & Associates, Inc. (herein referred to as SWG) as Designer of Record for the sludge processing facilities.

CMAR FIRM shall provide for OWNER the following specific services and work:

**1.1** The work covered in this scope includes construction, building permitting and post-construction services for the Project known as the City of Weslaco North Wastewater Treatment Plant. This facility shall be constructed to expand the plant from current 3 million gallons per day (MGD) to a capacity of 4.75 MGD, with a peak of 17.1 MGD.

**1.2** This scope of work is generally based on the following documents produced by multiple design firms:

- CDM 30% Design Drawings received 12/1/08
- Half Associates Final Design Drawings stamped 10/17/08
- Sigler Winston Greenwood Preliminary Design Report only
- Guidance and edits to the above as directed by the City of Weslaco for budget considerations

The construction work to be executed in the field will be based on final designs and Issued for Construction (IFC) design drawings and specifications. Based on these documents and subsequent discussions with the design firms, the elements of scope of work, and key exclusions, and a definition of design deliverables are generally described as follows:

- A. Constructability and Value Engineering (VE) support to the Design Firms and Program Manager. The 100 percent design packages will provide details to allow the issuance of building permits and construction by the CMAR Firm of the civil, mechanical, architectural, structural, electrical, instrumentation and control system, and HVAC elements of the project. Preparation of Record Drawings will be by Design Firms.
- B. Construction Manager at Risk for all facilities, as designed by all Design Firms, or portions thereof as directed by Owner, as shown on the drawings, including

furnishing all materials, installation of equipment, testing, and all site work.

- C. Post-Construction Services. This includes startup assistance and individual process equipment Operations and Maintenance manuals for each piece of new equipment. The Design Firms will be responsible for preparation of an overall operations and maintenance manual for the plant. CMAR Firm will also provide training and startup assistance and oversight of process equipment startup and training. Overall plant startup assistance is not provided in this contract - only startup for individual pieces of new equipment that have been provided under this contract.
- D. Permitting activities. Obtaining building, electrical and SWPP permits required for construction of the facilities. No other permits, including FAA permits, are included in this scope of work.
- E. Key Exclusions and Clarifications:
- No headworks or new influent pump station will be provided. Screening and a bypass line with piping/fittings as provision for these facilities in the future will be included and is detailed in the scope below.
  - Additional easements, rights-of-way and land exchange agreements for site access and encroachment shall be the responsibility of the OWNER.
  - CDM structural design basis for ground water is MSL 62'.
  - It is assumed that final designs issued for construction under this scope of work from all design firms will be to appropriate and pertinent design and regulatory standards.
  - No baseline surveying and establishment of temporary benchmarks will be provided.
  - No demolition of existing structures or piping not in conflict with new construction will be performed, these will be abandoned in place.
  - No environmental remediation is included.
  - No fencing will be provided.
  - No re-seeding nor landscaping will be provided.
  - No paving or roadways will be provided, no caliche road base will be provided. Only construction access will be created, OWNER will be responsible to create road base and pavement as needed after construction.
  - No new emergency eyewash/shower stations will be provided; existing facilities will be used.
  - No new plant water system, fire protection/suppression system, plumbing or HVAC will be provided.
  - No O&M building and support construction for servicing this facility will be provided.
  - No Odor Control system will be provided. These facilities are not included

within this project scope, although SWG has indicated it in their preliminary report.

- No on-site material testing will be provided.
- No Resident Project Representative (RPR) or field inspection will be provided.
- No SCADA system will be provided.
- No sludge bed rehabilitation (i.e. excavation and removal of existing material) will be conducted.
- Existing overhead power lines will not be moved, they will be abandoned in place.
- Raven coating for concrete at proposed future influent pump station and headworks will not be provided due to cost limitations (an estimated \$375,000).
- OWNER is responsible for clearing and grubbing of all new plant construction area. OWNER is responsible for provision of 30" RCP pipe culvert and backfill to pipe invert in the main ravine dividing the north and south areas of the WWTP per the site plan from Brionas Engineering.
- OWNER must advise TCEQ of construction plans, submit plan letter to TCEQ, and request authorization to construct in advance of TCEQ issue of expanded permit. Construction in advance of this will be at OWNER risk.
- OWNER will be responsible for construction utility (power, water) consumption costs.
- OWNER will provide potable construction water at no cost to CMAR Firm.
- OWNER will remove all existing debris and salvage from new plant construction area prior to commencement of WWTP construction.
- OWNER to provide dumpster/dump trucks for belt filter press sludge cake.
- The OWNER will obtain all applicable noise and odor easements required for the project.
- Potential for procurement of good-condition warrantable used equipment will be explored and put forward for OWNER consideration where relevant, this may include such items as the 1,000kW generators. A \$100,000 credit has been included in the total price for this.

Other exclusions and OWNER responsibilities as relevant are detailed in each task below.

F. Design Deliverables to be provided to CMAR Firm

All Design Documents issued for construction must be stamped, sealed and labeled "Issued for Construction" (IFC) and provided by the RPR to the CMAR firm with a transmittal sheet along with a request for receipt. More details on communications are provided in Section 6 below. **No procurement or construction work will be executed without stamped IFC drawings and specifications.** The documents will include the

following at a minimum:

Civil Design

1. Final sizing and routing of buried piping
2. Final hydraulic profile
3. Final grading plan
4. Final technical civil specifications as required.

Process Mechanical Design

1. Final design of bypass of proposed future headworks facility and influent station with addition of new pumps and screens at new aeration basin. (CDM modifications to Halff & Associates design)
2. Final design aeration basins, clarifier, chlorine contact basin conversion. Final selection of process pumps, clarifier mechanisms, and monitoring equipment. Final design of all piping associated with process tanks, structures and facilities. (CDM Inc. Design)
3. Final design of sludge processing facilities consisting of new installations of submersible mixers, belt filter press, chopper pumps, wash pumps and polymer feed system and conveyor to dumpster or dump trucks to be provided by OWNER (SWG Design).
4. Final design of chemical feed facilities, including chlorination system and dechlorination system, polymer system and required metering pumps, and piping. (All design firms).
5. Final technical mechanical specifications as required. (All design firms).

Instrumentation

1. Final P&IDs, showing instruments, process equipment and all input/output points.
2. Final control system architecture for all systems.
3. Final process control narratives (coordinated with process mechanical).
4. Final design of WWTP SCADA system to allow for future communications with OWNER's NWWTP Control Room (Chief Operator) in O&M Building by others.
5. Final technical instrumentation specifications as required (SCADA is not included).

Electrical

1. Final layout and design of site electrical plan.
2. Final power plans, MCCs
3. Final One-line diagrams
4. Final design and selection of standby diesel engine-driven generators

5. Final technical electrical specifications as required, including coordination with power provider for final loads and service sizing

Structural

1. Final structural loads
2. Final design of foundations
3. Final design of structural elements for the headworks area, aeration basins, chlorine contact basin, clarifier, sludge processing facility (including any polymer facilities) and demo/modifications to existing structures such as existing clarifier and chlorine building.
4. Final drawings, including plans, sections, and details
5. Final technical structural specifications as required

Architectural

1. Technical architectural specifications as required

HVAC and Plumbing

1. Plumbing, fire protection and HVAC construction is not included in this contract.

1.3 Detailed Description of CMAR Firm's Tasks

A. Constructability and VE Services to Design - ongoing meetings, discussions and design reviews will be provided as design develops in order to provide the most cost-effective, constructable and efficient design. This will consist of drawing reviews and participation in design milestone meetings.

B. Permitting and Approval Activities

Actual fees for all permits, reviews, and approvals, as charged by the permitting agencies, are not included. These costs will be paid directly by the OWNER.

Stormwater Pollution Prevention Plan

1. Adopt existing Stormwater Pollution Prevention Plan for the modified Weslaco North WWTP.
2. Submit Notice of Intent to Discharge Stormwater for the modified Weslaco North WWTP to TCEQ.
3. Assist OWNER with meetings/revisions as reasonably necessary in responding to TCEQ requests for additional information as needed.

OWNER Building Permit

1. Submit plans and specifications to the Weslaco Building Department for the Weslaco North WWTP.
2. Coordinate with OWNER and design firms as needed to respond to Building Department requests for additional information as needed.

Other Permits by OWNER

1. Texas Pollution Discharge Elimination System (TPDES). OWNER will be responsible for the TPDES permit.
2. Reuse Permit - OWNER will be responsible for the TPDES permit.
3. FAA Permit - OWNER will be responsible for FAA permits.
4. Environmental Remediation Permits - OWNER will be responsible for any permits related to environmental remediation of the site.

C. Construction

1. General

CMAR FIRM shall supply for its own use temporary construction trailers and sanitary facilities, for the duration of the construction activities.

CMAR FIRM will obtain temporary telephone service, and will pay for connection to and for temporary service from the local telephone service provider during construction, and disconnection when construction is completed. CMAR FIRM will not provide or install any internal wiring and jacks for the permanent telephone service.

CMAR FIRM has not included any costs for handling, removal, or remediation of any contaminated material, asbestos, or other special wastes that may be encountered during construction. Should such materials be knowingly encountered, the OWNER will be notified immediately for a decision on how to proceed.

The CMAR Firm will coordinate the services of the OWNER's independent, appropriately-certified, third party testing laboratory to perform the following on-site testing:

- Soil Compaction Testing
- Concrete testing
- Any other miscellaneous testing such as weld tests as needed

The CMAR Firm will not pay for testing, these are to be paid by OWNER. OWNER will provide water for all hydrotests at no cost to CMAR Firm.

Tie in to the 30" plant effluent line will be downstream of the new chlorine contact basin. The OWNER will take responsibility for securing all required easements for any construction outside of the existing WWTP site.

All new design will be to OSHA standards. The CMAR Firm will be responsible for the safety of its employees and subcontractors and will be to OSHA standards and cognizant of any City of Weslaco policies and procedures. The CMAR Firm will produce a Health and Safety Plan prior to mobilization that outlines project-specific health and safety protocols.



2. Site/Civil

CMAR FIRM shall perform grading, cut and backfill, and compaction operations for the new structures to be constructed on the project site under this Agreement, with the exception of the north-south ravine as noted in the exclusions above. It is anticipated that final grading design will not require the need for importation of additional fill material, nor export. It is assumed that excavated material may be used for backfill.

Access roads to and around the new plant facilities will not be provided. No re-seeding nor landscaping will be provided.

Demolition and excavation spoils will be stockpiled on site.

3. Electrical

Existing permanent power is available at the site, no AEP (utility provider) construction costs are included in this contract. New transformers and primary conductors are to be procured, owned and installed by AEP/Owner and are not included in this contract. Two (2) concrete transformer pads are included in this contract. CMAR Firm will trench and install ductbank runs for primary conductors, with pull strings for AEP to pull the conductors through the conduits, from the property line to the two (2) new transformer locations. CMAR Firm will coordinate with the utility provider for installation.

The typical conduit runs will be six (6)-4" conduits for electrical and two (2)-2" conduits for instrumentation.

Installation of permanent electrical services will be by OWNER, and shall be accomplished in a timely manner so as not to impact progress of CMAR Firm's work. Power usage costs for construction, plant startup, testing and operation shall be paid directly to the Utility Company by the OWNER.

OWNER will pay for all electricity and chemicals consumed during the construction operations and during start-up and commissioning of the facility. CMAR Firm will pay for installation of temporary electrical drops for construction purposes.

Two new 1,000 kW standby generators will be provided. The existing 200 kW generator already on site cannot be used to augment standby power. Two (2) new 2,000 Amp transfer switches and new electrical wiring to support backup electrical power is included.

Electrical/controls will be NEMA outdoor rated. All existing overhead power lines will be abandoned in place, not relocated.

4. CDM modifications to Halff Associates Design - Influent Pumpstation

Structural

A concrete pump pad will be provided.

Process Equipment

Four new 10" 2,320 gpm pumps with electrical controls will be provided, with forcemain bypass piping to the aeration basin.

5. CDM modifications to Halff Associates Design - Headworks Facility

Structural

A CIP concrete channel and box will be provided at the influent to the aeration basin.

Process Equipment

The proposed process equipment will consist of a mechanical step bar screen, and a manual bar screen.

6. CDM Design - Aeration Basins

Structural and mechanical layout and details for the activated sludge system will be provided as shown on the 30 percent submittal drawings. There will be one (1) aeration basin with approximate dimensions 45' x 190' x 21' depth with a common wall as provision for one future additional aeration basin. As indicated on the drawings. There will be an influent splitter box and one (1) preliminary bioselector aeration chamber. Flow from the headworks to the aeration basins will be via a 36" line to the splitter box at the entrance to the bioselector. Walkways and structure access will be provided.

The blowers required for biological process aeration will be located outside, adjacent to the aeration basins with a pre-fabricated canopy cover on a concrete pad.

Process Equipment

Aeration diffusers will be of the fine bubble type. A single, portable, electric hoist will be provided for service and maintenance.

Two (2) blowers will be provided (1 duty, 1 standby) to meet the process air requirements. These blowers will be located outdoors and not require HVAC.

7. CDM Design - Clarifier

Structural

Structural and mechanical layout and details for the circular clarifier will be as shown on the CMAR Firm preliminary drawings. There will be one (1) new 104' diameter circular clarifier with skimmer.

Operator access will be provided via half-bridge walkway to the center point of the clarifier and along the entire clarifier weir.

Process Equipment

Clarifier equipment will be supplied with a center cage, half-bridge, rake arms, scum trough, feed well, weirs and baffles. The drive assembly consists of an electric motor.

8. Chlorine Contact Basin and Chlorine Room

One (1) existing clarifier will be retrofitted as a chlorine contact basin.

Structural

Structural and mechanical layout and details for the chlorine contact basin will be modified as shown on the CMAR Firm site plan. A 6'x6' chlorine box with slide gate will form the entry into the basin.

Process Equipment

The process equipment will consist of chemical dosing systems and internal baffles/weirs. In the chlorine building, the existing chlorine system and tank hoist will be removed and replaced with four new ejectors and a lifting hoist on existing monorail beam. It is assumed that the existing beam is adequate for the load, however, the CMAR Firm will provide a load-test of the existing beam for verification. The existing pressure feed will be replaced with a vacuum feed system. Existing safety equipment will be reused. Hose bibs and sluice gates are not provided at the converted CCB.

9. RAS/WAS Pumpstation and Pumps

Structural

A 17'x14' CIP concrete slab will be provided. The potential for use of a package pump station will be explored for cost reduction.

Process Equipment

Two (2) pumps will be provided with discharge connections, guiderails and anchor brackets. The potential for use of a package pump station will be explored for cost reduction.

10. SWG Design - Oxidation Ditches/ Aerobic Digesters

No 30% design has been developed. CMAR Firm assumptions for reaching GMAX price are based on experience with comparable facilities.

Civil/Site

No dewatering and no cleanout of the existing ditches is included.

Process Equipment

2-10hp submersible mixers are being added to supplement mixing. Modifications to any existing equipment in this area is not included in this scope of work.

11. SWG Design - Belt Filter Press (BFP)

No 30% design has been developed. CMAR Firm assumptions for reaching GMAX price are based on experience with comparable facilities.

Structural

The facility will include reinforced concrete construction for an approximately 58'x45' slab and equipment mounting areas. The equipment mounting areas will have curbing to contain belt filter press washwater and direct these flows to a floor drain.

The roll-off container (or dump trucks) for sludge removal will be slab-on-grade with embedded C-channel for roller tracking. The container/trucks are to be supplied by OWNER and not included in this contract.

Process Equipment

The process equipment will consist of one (1) skid mounted assembly that will include polymer feed pump, wash water booster pump, sludge feed pumps, control panel, and conveyor controls. Sludge dewatering will be accomplished with a single 2.0 meter 3-belt filter press unit. This equipment will have the gravity drain section of the belt press at operator level, thereby eliminating the need for operator platforms.

Sludge will be conveyed to a covered, outdoor loading area via a straight run inclined belt conveyor.

10. CDM Design - Control System

New integrated controls for blowers and aeration will be provided. Provisions for future instrumentation and control system (flow measurement, pressure measurement, level measurement, position or status measurement, etc.) and a Programmable Logic Controller (PLC)-based automatic control system will be made. Spare (empty) duct bank and conduit will be provided for the PLC.

E. Post-construction Services

1. When the processes are ready for operation, startup assistance will be scheduled and provided by the CMAR Firm, including two (2) days of on-site training of OWNER personnel by an operational specialist for each major process equipment, or group of processes as needed. This training will supplement the required startup training provided by the equipment suppliers on their specific equipment. It will feed into the facility O&M manual to be prepared by the Design Firms.
2. Four copies of the equipment manuals will be prepared, in a format approved by the OWNER, including an overview of the entire treatment process, a description of the operation and maintenance instructions for each plant component, safety and emergency response procedures, and recommended staffing requirements.

3. The CMAR Firm will not be providing the biological seed for the startup of the treatment plant. In addition, the OWNER will need to arrange delivery and pay for of all required chemicals for startup of the WWTP.
4. Red-line markups of the drawings will be provided to the Program Manager for drafting of final As-built drawings to the OWNER.

#### 1.4 Ownership and Warranties

Warranties on construction and all installed equipment will commence at the date of substantial completion for this project or as a structure/process is placed into the commission by the OWNER. Substantial completion can be defined for an individual process/structure or for a group of processes, or for the entire construction, as commissioned by the OWNER. The date of substantial completion will be established after the following events occur: Substantial Completion shall comprise the completion of all work associated with this scope of work for the Weslaco North Wastewater Treatment Plan so that the new and modified facilities are operating properly and functioning as designed. Work that can be completed between Substantial Completion and Final Completion includes finish work such as cleanup, finish painting, landscape repairs, and final documentation. CMAR Firm shall provide equipment training and manufacturer certifications, and submit spare parts and final O&M Data for Substantial Completion to be deemed complete by OWNER. The OWNER will thereupon issue a letter of substantial completion, effective the date of letter, to CMAR Firm.

Some minor non-essential construction work may not be completed by the substantial completion date. All construction and equipment shall be installed and completed prior to CMAR Firm's written submittal of request for final inspection. Final acceptance by OWNER and final payment shall not occur until final inspection is held and Program Manager's RPR, OWNER and CMAR Firm determine that there are no punch list items requiring remedy. If there are any punch list items, they shall be promptly corrected by CMAR Firm to OWNER and Program Manager's RPR's satisfaction before a final acceptance letter is issued by OWNER. Warranties on all equipment are for one year from the time that the warranties commence. OWNER will assume ownership of the plant and facilities at the time of substantial completion and will also begin to operate the facility.

The warranty will be for a period of twelve (12) months following Substantial Completion of each process equipment unit, and provided that the unit/equipment is properly operated and maintained in accordance with the instructions, manuals and training provided by the CMAR Firm to the designated OWNER operations staff.

#### 2.0 Time and Schedule

The time periods for the performance of CMAR Firm's services and work are as follows:

#### 2.1 Schedule for CMAR Phase

2.1.1 The work under of this Agreement shall commence within 15 calendar days following issuance of the notice to proceed. The work under this Agreement shall be completed to the point where the facility is ready to commence start-up activities within approximately 545 calendar days following issuance of the notice to proceed. This shall be the beginning of the startup and trial operation period. Warranties for essential equipment shall commence and plant ownership shall transfer to the OWNER on the date of substantial completion established by the procedure described in Section 1 above. The date of substantial completion shall be within approximately 500 calendar days following issuance of the notice to proceed. Full closeout of the project, including completion of all other non-essential construction, and commencement of all other associated warranties, is scheduled to occur approximately 600 calendar days following the issuance of the notice to proceed.

2.1.2 The preliminary Critical Path Method (CPM) schedule for final design and construction activities is included as Exhibit C. The schedule is based on the CMAR approach, which will include preparation of several design and construction packages, with the intent being that parts of the project are under construction while other parts are being designed. The OWNER will be the reviewing agency for this project and will issue the appropriate permits to construct the design packages. The OWNER has retained a Resident Project Representative who will inspect the work. The OWNER may also inspect the work.

### 3.0 Change Management and Adjustments to Guaranteed Maximum Price (GMAX)

Change orders will be allowed that will adjust the GMAX to reflect conditions that occur after further refinement of the design or that unexpectedly arise as a result of the actual construction. The components of work to be included have been detailed in Section 1 above. Items that constitute changes that warrant adjustment to the GMAX include such items as:

- OWNER-initiated additions to scope,
- OWNER-initiated substitutions on materials, equipment or subcontractors - that is, if the OWNER elects to use a more expensive alternative material, equipment or subcontractor even though the lowest price option selected by the CMAR Firm meets the specifications and best-value criteria,
- Substantive changes in scope or unanticipated site conditions
- Force majeure.

Change order work will be on a lump-sum basis. A rate basis for labor and ODCs for owner-initiated change orders has been presented separately in Exhibit AA, and should be referenced for this Exhibit. The rates will be used to build a lump sum estimate for negotiation.

### 4.0 Compensation and Invoicing

4.1 The total Guaranteed Maximum Price for the scope of work identified in this Exhibit A is **\$16,062,281.**

4.2 Cost Reimbursable Schedule of Values and Guaranteed Maximum Price

Actual payment will be based on actual reimbursable costs presented in a monthly invoice. A schedule of values will be prepared by the CMAR Firm and submitted to OWNER for approval within 30 days of issuance of the notice to proceed. There will be no maximum price guarantees by line item (other than the two lump-sum items, on General Conditions and Fee as discussed below). The GMAX will be based on the total of the Schedule of Values. The mutually-agreed schedule of values will form the basis for monthly invoicing, which will be based on the costs of the work performed. The OWNER's representative will review these monthly payment requests with the CMAR Firm and recommend payment of the request to the OWNER.

#### 4.3 Lump Sum General Conditions

General conditions costs include construction management labor and expenses, and direct field costs. The breakdown of these costs is as presented in the GMAX estimate for a total fixed amount of \$1,339,642. This cost will be treated as a lump sum amount, and will be invoiced monthly in 18 equal payments, beginning with the first month of the project. In the event of early completion, the remaining amount will be summed and invoiced in the final invoice.

#### 4.4 Lump Sum Fee

The total lump sum fixed fee for the scope of work identified in this Exhibit A is \$1,670,477. Any increases in costs beyond the lump sum amount, which are not justified under the provisions of the relevant articles of the main Agreement, shall be solely the responsibility of CMAR Firm and shall not be assessed in any manner against OWNER. If a change in the cost is justified under the relevant articles of the main Agreement, then a change order will be processed under the provisions of the main Agreement.

#### 4.5 Shared Savings

Savings are defined as the difference between actual cost-plus-fee and the GMAX, and is separate and distinct from the Contingency amount which is listed separately on the Schedule of Values. Any savings will be shared between OWNER (25%) and CMAR Firm (75%). This amount will be shared at the end of the project once all work to final completion is completed.

#### 4.6 Contingency

The contingency amount has been mutually agreed as \$1,828,739 and will be listed as a separate line item on the Schedule of Values and based on the degree of completion of the CDM Design, the SWG Design and for the Half Design components respectively. This amount is to be used by the CMAR Firm, with the express written consent of the OWNER, in the event that a cost is incurred that is not addressed in a specific line item and does not qualify for an increase in the contract price. The following are examples of items that fall into the contingency category:

- Owner preference to choose optional or additional items that would not be covered under change order
- Trade buyouts which are not as favorable as estimated
- Rework as a result of non-negligent errors
- Overtime or schedule acceleration costs that may be mutually agreed to be implemented and would not be reimbursable through a change order

The contingency amount (less any amounts that are used for work as agreed and described above) will be shared between OWNER (60%) and CMAR Firm (40%).

**Summary of Savings/Contingencies Split**

	Client	CCI
1. GMAX	25%	75%
2. GC's (Fixed)	n/a	n/a
3. OH&P (Fixed)	n/a	n/a
4. Contingency	60%	40%

4.7 Retainage – OWNER will retain 5% of monthly invoice, the sum to be paid to CMAR firm in Final Invoice.

4.8 Invoicing – AIA format with monthly billing. Invoices will be prepared in draft form and reviewed with the RPR prior to submitting in final form to the OWNER. Payment terms will be NET 30 days.

**5.0 Communications & Oversight**

All RFI's, Shop Drawings, Submittals and construction correspondence regarding all components of design will be addressed to the Program Manager's Resident Project Representative (RPR). The RPR will distribute these items as required and provide the sole point of contact for the CMAR Firm on these items.

The RPR will be responsible for all site inspections and will be responsible for daily oversight of construction activities.

All Design Documents issued for construction must be stamped, sealed and labeled "Issued for Construction" (IFC) and provided by the RPR to the CMAR Firm with a transmittal sheet along with a request for receipt. The RPR shall not assume documents are transferred to CCI unless a return receipt is confirmed. The RPR will be responsible for maintaining a drawing log and. Individual design firms will not provide IFC documents directly to the CMAR firm.

There shall be weekly construction meetings at the job site. These construction meetings will include OWNER personnel, Program Manager's (RPR) and Design Firm's staff as required; Program Manager and Design representatives may call-in to meetings as needed. Design Firm's representatives shall make visits to the site at intervals appropriate to the various stages of construction, at least twice per month, one of which will be specifically for invoice review – these terms are consistent with their contract with OWNER.

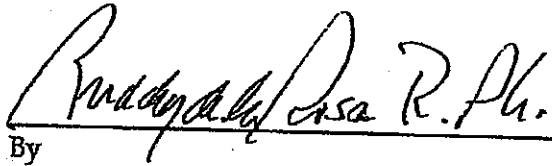
**6.0 Terms and Provisions in Conflict**

If the provisions set forth in the main Agreement are in conflict to this Exhibit A, the provisions of this Exhibit shall govern.



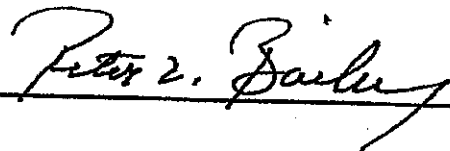
Acceptance of the terms of this Exhibit is acknowledged by the following authorized signatures of the parties to the Agreement.

OWNER  
City of Weslaco, TX

  
By \_\_\_\_\_

Buddy De La Rosa, Mayor

CMAR FIRM  
CDM Constructors Inc.

  
By \_\_\_\_\_

~~Paul R. Shea, President~~

Peter T. Bailey, SENIOR V.P.

**MASTER SERVICES AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

THIS IS AN AGREEMENT made as of February 5, 2008 between City of Weslaco ("OWNER") and Camp Dresser and McKee Inc. ("ENGINEER").

ENGINEER's Services will be performed pursuant to individual Task Orders issued by OWNER and agreed to by ENGINEER. Such Task Orders will contain the specific scope of work ("Services"), the time schedule, charges and payment conditions, and additional terms and conditions that are applicable to such Task Orders. An example Task Order is attached hereto.

Execution of a Task Order by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in the Task Order. This Agreement will become effective on the date first above written.

The terms and conditions of this Agreement shall apply to each Task Order, except to the extent expressly modified. When a Task Order is to modify a provision of this Agreement, the Article of this Agreement to be modified shall be specifically referenced in the Task Order and the modification shall be precisely described.

**ARTICLE 1 – SCOPE OF SERVICES**

- 1.1 ENGINEER will perform for OWNER services as described in individual Task Orders (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

**ARTICLE 2 – TIMES FOR RENDERING SERVICES**

- 2.1 The period of service of this Agreement shall be indefinite, subject to the conditions specified in Article 5.3 of this Agreement.
- 2.2 The specific time period for the performance of ENGINEER's Services will be set forth in individual Task Orders.
- 2.3 If the specific periods of time for rendering services or specific dates by which services are to be completed for any individual Task Order are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

**ARTICLE 3 – OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Provide all criteria and full information as to OWNER's requirement for a Task Order and designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the project described in each Task Order, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Furnish to ENGINEER all existing studies, reports and other available data and services of others pertinent to the Task Order, obtain or authorize ENGINEER to obtain or provide additional reports and data as required, and furnish to ENGINEER services of others required for the performance of ENGINEER's services for a Task Order, and ENGINEER shall be entitled to use and rely upon all such information and services provided by OWNER or others in performing ENGINEER's services under a Task Order.
- 3.5 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the project described in each Task Order including previous reports and, as applicable to the Services, any other data relative to design or construction of the project.
- 3.6 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under a Task Order.
- 3.7 Provide crews with associated safety equipment to open and protect manholes as required by the ENGINEER.
- 3.8 Provide traffic control or policing as required.
- 3.9 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.10 Furnish approvals and permits from all governmental authorities having jurisdiction over the Task Order and such approvals and consents from others as may be necessary for completion of the Task Order.
- 3.11 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any defect or conformance in ENGINEER's Services or in the work of any Contractor.
- 3.12 OWNER agrees to assume responsibility for personal and property damages due to ENGINEER's interference with subterranean structures such as pipes, tanks and utility lines that are not correctly shown on the documents and information provided to ENGINEER.
- 3.13 Bear all costs incident to compliance with the requirements of this Article 3.

#### ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES

- 4.1 Methods of Payment for Services of ENGINEER.
  - 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in each Task Order. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in each Task Order.
  - 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Invoices are due

and payable on receipt.

- 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

## ARTICLE 5 – GENERAL CONDITIONS

### 5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality.

### 5.2 Opinions of Probable Construction Cost

ENGINEER's opinions of probable Construction Cost, as applicable to the Services provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

### 5.3 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

### 5.4 Use of Documents

5.4.1 All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

5.4.2 OWNER may rely upon that data or information set forth on paper (also known as hard copies) that the OWNER receives from the ENGINEER by mail, hand delivery, or facsimile, are the items that the ENGINEER intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by the ENGINEER to the OWNER are furnished only for convenience, not reliance by the OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. In all cases, the original hard copy of the documents takes precedence over the electronic files.

- 5.4.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the OWNER receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the OWNER shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the ENGINEER.
- 5.4.4. When transferring documents in electronic media format, the ENGINEER makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the ENGINEER.
- 5.4.5 Owner may make and retain copies of documents for information and reference in connection with use on the Project by OWNER. ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and other projects of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.
- 5.4.6. If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.5 Controlling Law

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

5.6 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.7 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

5.8 Successors and Assigns

5.8.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors,

administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.8.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.8.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.8.3. Unless expressly provided otherwise in this Agreement:

5.8.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

5.8.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

#### 5.9 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

#### 5.10 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 5.11 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

#### 5.12 Environmental Site Conditions

5.12.1 OWNER has disclosed to ENGINEER in writing the existence of all known and suspected

Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern, as defined in Article 6, located at or near the Site, including type, quantity, and location.

- 5.12.2 OWNER represents to ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to ENGINEER, exist at the Site.
- 5.12.3 If ENGINEER encounters an undisclosed Constituent of Concern, then ENGINEER shall notify (1) OWNER and (2) appropriate governmental officials if ENGINEER reasonably concludes that doing so is required by applicable Laws or Regulations.
- 5.12.4 It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 5.12.5 If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

5.13 Insurance

Prior to the commencement of This Part of the Project, SUBCONTRACTOR shall provide ENGINEER with certificates of insurance evidencing the required insurance. Such certificates shall be issued by an insurance carrier(s) acceptable to ENGINEER and shall be endorsed to include: (1) ENGINEER and OWNER as additional insureds on the Commercial General Liability and Commercial Automobile Liability Policies; and (2) thirty (30) days prior written notice of cancellation or material change in any of the coverages; (3) a waiver of subrogation on the Commercial General Liability, Commercial Automobile Liability and Workers' Compensation Policies; (4) primary insurance coverage on the Commercial General Liability and Commercial Automobile Liability Policies; and (5) be attached as Exhibit B to this Agreement.

MINIMUM REQUIRED INSURANCE

1. Workers Compensation	-	Statutory
Employer's Liability	-	\$1,000,000 per occurrence
2. Commercial General & Contractual Liability*		
Bodily Injury	-	\$1,000,000 per occurrence
	-	\$1,000,000 in the aggregate
Property Damage	-	\$1,000,000 per occurrence

	-	\$1,000,000 in the aggregate
Personal Injury	-	\$1,000,000 in the aggregate
3. Commercial Automobile Liability Coverage for all owned (private and others), hired and non-owned vehicles;		
Bodily Injury	-	\$1,000,000 per occurrence \$1,000,000 in the aggregate
Property Damage	-	\$1,000,000 per occurrence \$1,000,000 in the aggregate
4. Professional Liability		
	-	\$500,000 per claim
	-	\$1,000,000 in the aggregate

\* Including, when site visitation is required, XCU (explosion, collapse, and underground) hazard coverage and premises operations, independent contractors, products, completed operations, contractual, personal injury (with employee exclusion deleted) and property damage coverages.

5.14 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.15 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.16 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.17 Waiver



Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.18 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.19 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.20 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design services, then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

5.21 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.22 Change Orders

5.22.1 Any work not contained in a Task Order shall be a change, and shall be performed by ENGINEER only pursuant to a written Change Order to this Agreement signed by OWNER and ENGINEER. Such a Change Order may increase or decrease the Work within the general scope of this Agreement. If this Change Order causes an increase in the cost of the Work, or of the time required for the performance of the Work, ENGINEER shall be paid additional compensation acceptable to both parties in accordance with Exhibit A or granted an extension of the schedule, or both.

5.22.2 In the event OWNER requests ENGINEER to develop information necessary for the consideration of a change in the project, and such a change is not adopted, OWNER shall reimburse ENGINEER for the costs which it incurs in connection with such efforts.

5.23 Construction Contractor's Means and Methods

ENGINEER shall have no authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by the construction contractor or for safety precautions and programs incident to the work of the construction contractor.

5.24 Reporting Regulated Conditions

To the extent required by law, OWNER shall promptly report regulated conditions, including, without limitation, the discovery of releases of hazardous substances at the site to the appropriate public authorities in accordance with applicable law.

5.25 Indemnification

OWNER recognizes that any Task Order executed by ENGINEER involving Constituents of Concern, as defined in Article 6, involves legal exposure and higher risk than ENGINEER's usual engineering services.

OWNER also recognizes that ENGINEER's services are to be compensated primarily on the basis of the time ENGINEER's personnel spend in rendering services and not on basis of the exposure and risk of the work.

Therefore, OWNER and ENGINEER agree as follows:

Notwithstanding any other provision in this Agreement to the contrary, for Task Orders involving or relating to Constituents of Concern, OWNER shall indemnify, defend, and hold harmless the ENGINEER and its subcontractors, consultants, agents, officers, directors, and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of the work by ENGINEER, or claims against ENGINEER arising from the work of others, related to Constituents of Concern, as defined in Article 6.

The above indemnification provision extends to claims against ENGINEER and to damages which arise out of, are related to, or are based upon the dispersal, discharge, escape, release, threatened release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, asbestos, or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether sudden or not.

Nothing in this Article 5 shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own finally determined negligence or willful misconduct.

5.26 Status of ENGINEER

Nothing contained in this Agreement shall be construed or interpreted as requiring ENGINEER, its officers, agents, servants, or employees to assume the status of a generator, storer, treater, transporter or disposal facility as those terms appear within the Resource Conservation Recovery Act, 42USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the treatment, storage, transportation or disposal of waste.

5.27 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. ~~If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association.~~ In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

*[Handwritten signature]*  
3-124/08

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

## ARTICLE 6 - DEFINITIONS

6.1 Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1.1 Services

The services to be performed for or furnished to OWNER by ENGINEER described in this Agreement.

6.1.2 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 6.

6.1.3 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.1.4 Construction Cost - ♦

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

6.1.5 Documents

As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

6.1.6 Contractor - ♦

The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

6.1.7 ENGINEER's Subcontractor

A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

6.1.8 Project

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♦ This provision is applicable for projects where ENGINEER provides Design, Bidding, and/or Construction Phase Services.

The total undertaking as described in each Task Order.

6.1.9 Reimbursable Expenses

The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit N/A.

6.1.10 Resident Project Representative - ♦

The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").

6.1.11 Standard General Conditions - ♦

The Standard General Conditions of the Construction Contract (No. N/A) of the Engineers Joint Contract Documents Committee.

6.1.12 Total Project Costs - ♦

The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

## ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

- 7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

This Agreement is to be governed by the laws of Hidalgo County, Texas. This supercedes what is written in Section 5.5.

This Agreement (consisting of Pages 1 to 22 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**THIS SECTION WAS INTENTIONALLY LEFT BLANK**

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♦ This provision is applicable for projects where ENGINEER provides Design, Bidding, and/or Construction Phase Services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

Buddy de la Rosa

By: Buddy de la Rosa  
Title: Mayor

ENGINEER:

Mari Garza-Bird

By: Mari Garza-Bird  
Title: Associate

Address for giving notices  
255 S. Kansas  
Weslaco, Texas 78596

Address for giving notices

CDM  
1777 NE Loop 410, Suite 704  
San Antonio, Texas 78217  
P - 210-826-3200

ATTEST:

Amanda C. Elizondo  
Amanda C. Elizondo, City Secretary

APPROVED AS TO FORM:

Ramon Vela  
Ramon Vela, City Attorney

**TASK ORDER NO. 1 TO  
MASTER SERVICES AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

This is Task Order No. 1 attached to and made part of the Agreement dated February 5, 2008. between City of Weslaco (ENGINEER) and Camp Dresser and McKee Inc. (OWNER).

This Task Order describes the Scope of Services, Time Schedule, Charges, and Payment Conditions for the Task Order known as:

2007 Bond Program Management (the "Project").

1. Scope of Services

ENGINEER shall provide for OWNER the following specific Services:

See Exhibit A

2. Time Schedule

The time periods for the performance of ENGINEER's Services are as follows:

See Exhibit A

3. Compensation and Invoicing

Compensation for Services of ENGINEER described in this Task Order will be on the following basis:

Lump sum agreement with a total fee of \$1,200,030.00

4. Terms and Conditions

The terms and conditions of the Agreement referred to above shall apply to this Task Order except to the extent expressly modified herein. In the event of any such modification, the modification shall be set forth below and the Article of the Agreement to be modified shall be specifically referenced. Modifications included in this Task Order are:

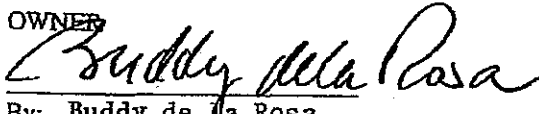
This Task Order is to be governed by the laws of Hidalgo County, Texas.

5. Terms or Provisions in Conflict

If the provisions set forth in the Agreement are in conflict with the provisions set forth in this Task Order, the provisions of this Task Order shall govern.

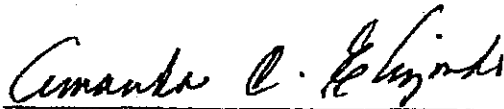
Acceptance of the terms of this Task Order is acknowledged by the following authorized signatures of the parties to the Agreement:

OWNER



By: Buddy de la Rosa  
Title: Mayor

ATTEST:



Amanda C. Elizondo, City Secretary

APPROVED AS TO FORM:



Ramon Vela, City Attorney

ENGINEER



By: Mari Garza-Bird  
Title: Associate

**Task Order No. 1  
Exhibit A  
City of Weslaco  
Bond Program Management  
Scope of Work**

The following scope of services is for the Management of the Bond Program for the City of Weslaco. The program will consist of two (2) new street projects, up to five (5) Street resurfacing projects, up to eight (8) lift station rehabilitation projects, rehabilitation of the existing WWTP process train, replacement of the existing WWTP headworks, a new building at the WWTP, a new receiving well at the WWTP, a new emergency generator at the WWTP, manhole replacement program and painting the West Water Tower.

**Task Description**

The Consultant services shall include the following tasks:

**Task 1 – Management, Project Development, Design Engineer Selection, Recommendation and Negotiation**

**Task 1 Total Fee \$219,240.00**

**Task 1.1 – Kickoff Meeting**

The Consultant shall hold a kickoff meeting with the City of Weslaco to review the expectations for the management and discuss project communications for the Program.

**Task 1.2 – Management Activities**

General management activities shall be as listed below.

- A. Develop Management Plan – Consultant will develop and maintain a management plan for the program. The management plan will include administrative and technical control procedures for the program. The management plan will serve as a guidance document for implementation of the program. The management plan will include data management procedures, budget control procedures and activities, invoicing procedures and a communications plan.



- B. Management Activities – Consultant shall conduct management activities for the duration of the project. The Consultant shall oversee the overall coordination and management of the program, advise the City of any changes, potential delays – and their potential cause, and recommend procedures and/or alternatives to mitigate problems or schedule delays.
- C. Meetings/Communications – The Consultant shall conduct monthly meetings with the City staff. In addition, the Consultant shall attend monthly City Commission meetings and present project status updates at the first meeting every month. It is currently anticipated that the duration of the program period will be twenty one months (21).
- D. Quality Management- The Consultant will develop and implement a Quality Management Plan for the duration of the program. The plan will include both quality assurance (QA) and quality control (QC) elements. These elements will provide guiding principles for the management team, design consultants and construction contractors, and will be augmented by the specific QA/QC tasks outlined in the design and construction scopes of work.

### **Task 1.3 – Plan and Execute Meetings/Workshops**

- A. Plan and execute up to 3 small group briefings with City representatives and design professionals on projects.
- B. Plan and organize up to 2 meetings with governmental and other entities such as utility companies to orientate them on the 2007 Bond Program.
- C. Develop handouts for all meetings.
- D. Write and edit 1 presentation.
- E. Plan and execute two public meetings or workshops with City Commission, including facilitation and meeting follow-up as well as supporting media meetings.
- F. Provide ongoing team communications for the project duration.

### **Task 1.4 – Project Controls**

The Consultant shall develop and implement project controls as follows:

- A. Document Control System – The Consultant shall implement a document tracking and control system for all drawing, submittals, contract documents, operating manuals and correspondence; and shall develop and maintain a resource library of relevant information on the various program elements.

The Consultant services will include the set-up, maintenance and operation of a central Document Control System. Project documentation will be used to support

administrative review, historical reference, and audit purposes. The Document Control system must facilitate the storage and timely retrieval of this documentation. The Consultant is responsible for identifying, then categorizing and organizing all documents and maintaining an on-site resource library.

The Consultant will evaluate and select the document management software appropriate for the program. Such software will be utilized for storage and easy retrieval of all electronic files, scheduling, correspondence and documentation. The Consultant will share the software with the City for the life of the program.

Consultant shall be responsible for maintaining original copies of documents. The original copies will be turned over to the City at the completion of the program.

- B. **Schedule and Planning System** – The Consultant shall implement and maintain a computerized program information system using Microsoft and/or Primavera computer software that integrates the program scope by task, budget, schedule control, and resource allocation functions. The system shall be capable of producing a master schedule incorporating each program element using critical path methodology. The Consultant shall advise the City of potential delays and recommend steps and alternatives to mitigate such delays.
- C. **Cost and Budget Control System** – The Consultant shall develop, implement and maintain a financial planning and control system that is integrated with the Schedule and Planning System. This system shall have the capability of monitoring actual costs versus budgeted costs, for each element, through each phase of the program. This system must have the ability to track forecast costs as program elements are defined and developed. The system shall have the capability to produce schedule forecasts, earned-value analysis.
- D. **Program Reviews and Reporting** – The Consultant shall prepare a memorandum monthly updating the overall schedule and budget status of the program. Such report shall be prepared in advance of the monthly meeting and shall be used as a basis for presentations on program status to the City.

### **Task 1.5 - Permitting and Coordination**

The Consultant shall assist with and coordinate with governmental or other licensing agencies as specified below during the design and construction of the improvements. The Consultant will not prepare or submit any permit applications. The following describe the Consultant's tasks associated with permitting and coordination.

- A. **TCEQ Permitting Coordination** – Consultant will provide coordination for TPDES permitting activities and will include TPDES permitting requirements into the master schedule for the program.

- B. Other Agencies – Consultant shall establish an allocation of budget to coordinate as required with state or local agencies on permitting and/or coordination issues.

### **Task 1.6 – Project Development and Procurement**

The Consultant shall review the projects, develop the scope of work for the projects and implement a plan for procurement of engineering firm(s) for completion of the Program improvements. This task shall include the following activities.

- A. The Consultant will review the projects to be completed and determine the best approach for project completion (a number of individual projects or grouping of several projects). The Consultant will meet with the City to discuss the best approach for project completion.
- B. The Consultant will develop the Scope of Work for the projects based on the best approach for completing the projects.
- C. The Consultant will review the Statement of Qualifications from the design professionals and make recommendations to the City of design professionals for the projects. The Consultant will meet with the City to discuss the recommendations.
- D. The Consultant will negotiate with the selected engineering firms on behalf of the City. The Consultant will negotiate scope and fees with the firms and shall recommend contract terms, scope and budgets for approval by the City. The City shall supply separate legal support to prepare the contracts. Design contracts shall not include any construction review on behalf of the professional since this agreement will provide a Q/A and Q/C program.
- E. The Consultant shall monitor and maintain contracts between the contracted engineering firms and the City.

### **Task 2 – Engineering Design, Bidding, Coordination and Management**

**Task 2 Total Fee - \$364,100.00**

#### **Task 2.1 – Design Process**

The Consultant shall oversee and manage the engineering design and bidding process. This task shall include the following elements.

- A. **Monitor Design Progress/Schedule** – The Consultant shall provide oversight of the design professionals throughout the program; oversee the delivery of engineering designs, schedule, quality and budget guidelines; review design professionals' progress payment requests; and make recommendations to the City based upon their review of design professionals' services, performance and progress. The Consultant shall review schedules produced by design professionals and coordinate with the overall Master Schedule at the start of each project; and develop a Program Design Schedule that incorporates all project design schedules.
- B. **Design Review and Applicability** – The Consultant shall participate in multi-discipline reviews of all designs at mid-term (60%) and near completion (90%) stages of design; coordinate with the City in design reviews; monitor conformance with design criteria and standards; manage design packages to achieve operations and maintenance efficiencies and reliability; review cost estimates as the design progresses to monitor the actual cost in relation to budgets; and review final cost estimates as designs are completed as a basis for bid evaluations. The Consultant shall work with design professionals during the review process to resolve design conflicts. The Consultant will also document cost, price and schedule change recommendations made by the design professionals and document design conflicts and resolutions.
- C. **Project Cost Review** – The Consultant shall provide an informal process at the 60% and 90% design review stage to determine where cost savings may be possible within the constraints of the project needs. No formal value engineering process shall be performed, but the Consultant shall provide a summary of cost savings recommendations at the conclusion of each design review process.
- D. **Constructability Review** – The Consultant shall perform constructability reviews for each project. The Consultant will review the final documents and identify potential risks and constructability issues. The Consultant shall offer suggested approaches to reduce potential risks and identify opportunities to potentially alleviate constructability issues. The constructability review will not replace or supercede due diligence and proper review procedures by the design professionals. This process will serve only as a cursory identification of potential issues for which the owner may need to be aware.

## **Task 2.2 - Bidding and Contracting**

The Consultant shall perform the following tasks during the bidding and contracting phases for each of the construction packages up to ten (10) contracts.

- A. Distribution of Bidding Documents – The Consultant shall collect design documents (plans and specifications) from the design professionals for each construction package and shall distribute documents to prospective bidders and construction clearinghouses. All documents should be in electronic format. The Consultant shall maintain a log of all planholders and provide communication to those planholders as necessary.
- B. Pre-bid Meeting – The Consultant shall conduct a pre-bid meeting for each of the construction packages. The Consultant working with the design professional shall develop an agenda and conduct the meeting. Meeting notes will be distributed following the meetings.
- C. Questions and Addenda – The Consultant shall receive all questions pertaining to the documents and shall oversee the addenda development process. The Consultant will work with the design professional to develop the necessary addenda and shall distribute the addenda to the planholders.
- D. Review and Evaluate Bids and Recommend for Award – The Consultant shall attend the bid opening for each construction package. The Consultant working with each design professional will evaluate each bid for completeness, will develop a bid tabulation and will recommend award of the contract to the lowest responsible bidder.
- E. Oversee Contracting Process – The Consultant shall work with the City and the prospective contractors to execute the construction contracts and obtain all bonds and insurance documents. The Consultant will coordinate and distribute documents as necessary.

### **Task 3– Construction Monitoring, Coordination and Management**

**Task 3 Total Fee - \$396,690.00**

#### **Task 3.1 - Construction Monitoring and Contract Management**

The Consultant shall perform construction monitoring and contract management duties. The Consultant will provide one, full-time resident project representative (RPR); and support personnel on an as-needed basis for detailed construction observations (structural, electrical, mechanical, instrumentation, etc.) for the duration of the construction activities. It is anticipated that the RPR will perform construction administration for all construction and will also provide construction observation services. It is anticipated that the City will provide one, full-time construction administration staff to work at the direction of the RPR for the duration of construction activities. The Consultant can provide additional, on-site staff for construction

observation as determined by project needs and as directed by the City. Exhibit B provides an hourly rate for additional construction observation. Tasks to be performed by the Consultant are as follows:

- A. Preconstruction Conference – The Consultant shall prepare an agenda and conduct a preconstruction conference for each construction contract.
- B. Construction Field Office – The Consultant shall establish an office with a conference room (at a location to be determined) and staff which shall plan and implement field procedures for each project, maintain field files and Consultant's sets of contract documents, and coordinate inspection services. Site offices and support areas for construction supervision activities shall be provided by the contractors engaged in construction at the sites.
- C. Contract Management – The Consultant shall monitor contractors' activities and verify satisfactory performance by each contractor including schedules, quality, and start-up; promptly recommend for implementation by the contractor remedial action to correct any deficiencies; document all problems with appropriate paperwork; hold weekly contractor coordination meetings and distribute meeting minutes to all attendees; coordinate operations with construction activity; collect daily reports; promptly coordinate responses to all requests from the City for information, data, status reports, progress reports, test results, schedule or budget changes, shop drawings, cost estimates and schedule impact related to change orders, contractor claims, delays and non-conforming work.
- D. Construction Scheduling – The Consultant shall review and monitor construction schedules from construction contractors; report deviations from construction schedules; develop and update a Master Schedule; and monitor and review construction progress with contractors.
- E. Field Document Control – The Consultant shall establish procedures and methods for receipt, processing, distribution, tracking, documenting and control of all field records, including field orders, requests for information, design changes, change orders and correspondence, shop drawings, blueprints, daily reports and all other field records required by the program and each project.
- F. Progress Payments – The Consultant shall establish and implement a written procedure with document path flow diagram for initiation, review and documentation of progress payments; make recommendations for payment based upon an Earned Value Analysis and a comparison of actual percent completion and budget percent completion; process and record all requests for payment and payments made.
- G. Construction Cost Control – Together with the contractors and design professionals, the Consultant shall develop an initial schedule of values for each contract; monitor construction progress as it relates to each contractors' schedule

of values; monitor requests for payment; establish procedures for receipt, processing and review of requests for change orders and develop methods for evaluation of requests for change orders including cost estimates and schedule impact; coordinate claims and requests for change orders with review by design professionals; ensure that all procedures and review of change orders are in compliance with contract documents; obtain prior authorization for the performance of any work resulting in a claim or change order; monitor construction activities to avoid claims and request for change orders.

H. Record Drawings – The Consultant shall verify that redline construction drawing plans are kept up to date by the contractor before each monthly approval of request for payment. The Consultant shall verify that complete construction drawings for all modified facilities have been prepared before project closeout. Modifications and new construction carried out by contractors during the life of the program shall be incorporated into the revised plans by the design professionals. The design professionals shall prepare the Final As-Built record drawings for all modified facilities. No final payment to contractors or design professionals shall be made until red line plans and final as built plans are presented and accepted by the City of Weslaco .

#### **Task 4– Geo-Technical Engineering Services**

#### **Task 4 Total Fee - \$220,000**

The Consultant shall perform construction materials testing for the projects. A sub-consultant will be used to perform these services. The purpose of construction testing services is to confirm that the work being conducted by the Contractor is in accordance with the plans and specifications. The contract documents will contain a specification section that requires the Contractor to coordinate with the Owner's/Engineer's testing company for the tests required. Typical tests include compressive strength tests for concrete cylinders and in-place density tests. Concrete cylinder tests typically include cylinder breaks at 7-days and 28-days. In-place density tests include compactions tests for subgrade and base materials. Other testing may be required as it relates to construction phase materials testing.

#### **Total Fee Tasks 1-4 - \$1,200,030.00**