



FARMERS
BRANCH

RESOLUTION NO. 2009-041

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
LEGAL SERVICES CONTRACT WITH MCELROY, SULLIVAN, & MILLER,
LLC. RELATING TO PERMITTING AT THE CITY LANDFILL

WHEREAS, the City desires to examine its long term options regarding disposal of municipal solid waste at the City's Camelot Landfill in Lewisville, Texas, including, but not limited to, possible permit amendments; and

WHEREAS, upon review of the responses received to the City's Request for Qualifications seeking statements of qualifications from law firms that specialize in municipal solid waste landfill permitting, City staff has determined that the law firm of McElroy, Sullivan, & Miller, L.L.C. is the firm most qualified with respect to the proposed scope of work; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to adopt the recommendation of the City Administration and authorize a contract for legal services with McElroy, Sullivan, & Miller, L.L.C.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch, Texas, that certain *Legal Services Contract* attached hereto as Exhibit "A" and incorporated herein by reference with McElroy, Sullivan, & Miller, L.L.C. for legal services described in said contract for an amount not to exceed \$1,591,000.

SECTION 2. The City Manager is hereby authorized to act on behalf of the City with respect to any authorizations required by the contract set forth in Exhibit "A" and to amend said contract from time to time as needed during the term of the Agreement.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS
BRANCH, TEXAS, THIS 14th day of July, 2009.

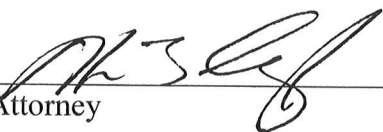
ATTEST:

Cindee Peters, City Secretary

APPROVED:

Tim O'Hare, Mayor

APPROVED AS TO FORM:



City Attorney

LEGAL SERVICES CONTRACT

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

§

THIS CONTRACT is made and entered into this date by and between the **CITY OF FARMERS BRANCH**, a Texas home rule municipality (hereinafter referred to as the "**CITY**"), and **McELROY, SULLIVAN & MILLER, L.L.C. and BRENT W. RYAN** (hereinafter referred to as "**ATTORNEY**") and evidences the following:

Recitals:

WHEREAS, CITY owns and operates a municipal solid waste landfill in Lewisville, Denton County, Texas, pursuant to permits from the State of Texas ("the Camelot Landfill"); and

WHEREAS, to prolong the useful life of the Camelot Landfill, CITY desires to obtain a permit from the State of Texas to expand the Camelot Landfill vertically and/or horizontally beyond the current permitted capacity ("the Project"); and

WHEREAS, CITY desires to engage the services of ATTORNEY as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Contract; and

WHEREAS, ATTORNEY desires to render professional services for CITY related to the Project in accordance with the terms and conditions set forth in this Contract;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which is hereby acknowledged, CITY and ATTORNEY agree as follows:

I.

SCOPE OF WORK

1.1 ATTORNEY will provide legal services related to the Project as set forth in Exhibit A: Scope of Work, attached hereto and incorporated herein by reference, inclusive of any amendments to the Scope of Work approved during the Term of the Contract in accordance with Section VIII, below, such services to be provided, invoiced, and paid for based on ATTORNEY'S hourly rates and expenses in accordance with Section III, below.

1.2 In performing the Scope of Work, ATTORNEY and CITY understand, acknowledge, and agree:

A. ATTORNEY is to work closely with, and look to as CITY's primary representative during the Term of this Contract, CITY'S Landfill Administrator, or his chosen representative; provided, however, ATTORNEY shall comply with directives and notices of CITY's City Manager, and/or the City Manager's

designee(s) if such directives or notices are made;.

- B.** In the event of an irreconcilable conflict between the provisions of the Scope of Work and this Contract, the provisions of this Contract will control unless otherwise agreed by the Parties;
- C.** ATTORNEY shall devote such time as reasonably necessary for the satisfactory performance of the Scope of Work. Should CITY require additional services not included under this Contract, ATTORNEY shall make reasonable efforts to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by CITY, and without decreasing the effectiveness of the performance of services required under this Contract;
- D.** To the extent reasonably necessary for ATTORNEY to perform the Scope of Work and subject to the prior written consent of CITY, which shall not be unreasonably withheld, ATTORNEY shall be authorized to engage the services of any agents, assistants, persons, or corporations that ATTORNEY may deem proper to aid or assist in the performance of Scope of Work, the cost of whom shall be included in the cost to CITY as set forth in Section III, below. However, direct payment of any such subcontractors shall be the sole responsibility of ATTORNEY unless otherwise agreed in writing by CITY;
- E.** ATTORNEY shall provide for its own office space and related facilities, equipment, telephones, facsimile machines, email facilities, transportation, and personnel necessary to perform the Scope of Work unless otherwise provided herein;
- F.** As the client, CITY and its representatives will have the ability to speak or confer with ATTORNEY or ATTORNEY's subcontractors and employees directly regarding any portion of the Scope of Work;
- G.** ATTORNEY shall be responsible for reviewing all invoices and all work of subcontractors hired by ATTORNEY to ensure all work was performed in accordance of the Scope of Work, in an expedient manner, and in accordance with any applicable federal, state, and local requirements.

II.

PERFORMANCE OF WORK; RELATIONSHIP OF PARTIES

2.1 ATTORNEY or ATTORNEY'S subcontractors and employees will perform all the work called for in this Contract. ATTORNEY hereby covenants and agrees that all of ATTORNEY'S associates, employees, and subcontractors who perform any portion of the Scope of Work will be fully qualified to undertake same and competent to do the work described in this Contract.

2.2 ATTORNEY understands, acknowledges and agrees that in performing the services set forth in this Contract, ATTORNEY is acting independently, and CITY assumes no

responsibility or liabilities to any third party in connection with these actions. All services to be performed by ATTORNEY pursuant to this Contract shall be in the capacity of an independent contractor, and not as an agent or employee of CITY. ATTORNEY shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the provisions of this Contract. As such, CITY shall not train ATTORNEY, require ATTORNEY devote its full-time services to CITY, or dictate ATTORNEY's sequence of work or location at which ATTORNEY performs ATTORNEY's work.

2.3 ATTORNEY shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by ATTORNEY pursuant to this Contract. Neither City's review, approval or acceptance of, nor payment for any of the services required under this Contract, shall be construed to operate as a waiver of any rights under this Contract, and ATTORNEY shall be and remain liable to City in accordance with applicable law for all damages to City caused by the negligent performance of ATTORNEY and/or any of its officers, employees, agents, or subcontractors of any of the services furnished under this Contract.

III. COMPENSATION AND INVOICES

3.1 Compensation. CITY agrees to pay ATTORNEY for the services provided pursuant to this Contract as set forth in Exhibit "A", attached hereto, including the Schedule of Charges in Table 3 therein; provided, however, the total amount of the compensation paid to ATTORNEY pursuant to this Contract will not exceed \$1,591,000.00 ("Limitation of Expenditure").

3.2 Estimated Annual Costs. Table 2 in the Scope of Work contains an estimated cost per year for the expected duration of the Project. CITY and ATTORNEY understand and agree that the estimated annual costs in said Table 2 may vary depending on the task and required personnel, time, and equipment required to complete the task(s), and City's election to alter the schedule or change tasks, which election City may make at its discretion.

3.3 Invoices. ATTORNEY will be paid pursuant to invoices submitted to CITY on a monthly basis that list and describe the time and costs incurred during the month for which the invoice relates. Invoices must include an itemization of hours worked, who performed the work, descriptions of the work or task performed, and expenses incurred. Documentation in support of the amount or work completed or costs incurred represented by the invoice shall be submitted with the related invoice. The invoices must be submitted to the City on or before the 20th day of the month subsequent to when the services were performed or costs incurred by ATTORNEY.

3.4 Payment. CITY will pay ATTORNEY within 30 days after the date each invoice is validated. An invoice will not be deemed "validated" until the Landfill Administrator has determined that: (a) the services and costs included in the invoice have been completed or incurred, respectively; (b) such services or costs conform to the requirements of this Contract and that the quality of such Services is consistent with ATTORNEY'S representations and warranties in this Contract; (c) the quantity of hours and costs provided are consistent with the quantities invoiced; (d) the amount invoiced, together with prior invoices, does not exceed the

then effective Limitation of Expenditure; and (e) the unit prices charged are consistent with this Contract and the applicable Schedule of Charges. CITY will notify CONTRACTOR that each invoice has been validated via electronic mail.

IV. TERM OF THE CONTRACT

This Contract will commence and be in full force and effect upon the approval of the City Council and the signing of the Contract by both parties. This Contract will expire at such time as all of the tasks described in the Scope of Work have been completed unless the parties mutually agree in writing to extend the term of the Contract, or, unless otherwise terminated as provided in Paragraph XIII herein.

V. CONTRACT PERSONAL

ATTORNEY understands, acknowledges and agrees that CITY has agreed to contract with ATTORNEY to provide the personal and professional services required to perform the Scope of Work because of ATTORNEY's particular skills, experience, and resources and that the performance of such personal and professional services are not to be assigned or sublet in whole or part without the prior written consent of the CITY.

VI. CONFLICT OF INTEREST

ATTORNEY hereby covenants and agrees that during the Term of the Contract that ATTORNEY and ATTORNEY'S subcontractors and employees will have no interest, nor acquire any interest, either direct or indirect, which will conflict in any manner with the performance of the services required in this Contract. All activities, investigations and other efforts made by ATTORNEY pursuant to this Contract will be conducted by employees or associates of ATTORNEY. ATTORNEY further covenants and agrees that it understands that the Code of Ordinances of the City of Farmers Branch prohibits any officer or employee of the CITY from having any financial interest, either direct or indirect, in any business transaction with the CITY. Any violation of this paragraph which occurred with the actual or constructive knowledge of ATTORNEY will render this Contract voidable by the CITY.

VII. CHANGE IN SCOPE OF WORK

CITY may from time to time request changes in the Scope of Work in this Contract. Any requested change which in the opinion of ATTORNEY or the CITY varies significantly from the Scope of Work set out herein or entails a significant increase in cost or expense to ATTORNEY must be mutually agreed upon in writing by ATTORNEY and the CITY. The parties herein acknowledge that any change in the Scope of Work which results in the increase in compensation to ATTORNEY above the Limitation of Expenditure must first be approved in writing by the CITY'S City Manager or City Council as required by state law or city ordinance or policy.

VIII. CONFIDENTIAL WORK

Any reports, designs, plans, information, project evaluations, data or any other documentation given to or prepared or assembled by ATTORNEY under this Contract will be kept confidential and may not be made available to any individual or organization by ATTORNEY without the prior written approval of the CITY except to the extent such disclosure is required by law or properly issued order of a court or state agency of competent jurisdiction.

IX. OWNERSHIP OF DOCUMENTS

All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by ATTORNEY and its attorneys, subcontractors, agents, representatives, and/or employees in connection with the Project are intended for the use and benefit of CITY. ATTORNEY and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of said Project documents. Notwithstanding, CITY shall own, have, keep and retain all rights, title and interest in and to all Project documents, including all ownership, common law, statutory, and other reserved rights, including copyrights, in and to all such Project documents, whether in draft form or final form, which are produced at CITY's request and in furtherance of this Contract or the Project. CITY shall have full authority to authorize contractor(s), subcontractors, CITY consultants, and material or equipment suppliers to reproduce applicable portions of the Project documents to and for use in their execution of the work or for any other purpose. All materials and reports prepared by ATTORNEY in connection with this Contract are "works for hire" and shall be the property of CITY.

X. NONDISCRIMINATION

As a condition of this Contract, ATTORNEY covenants and agrees that ATTORNEY will take all necessary actions to ensure, in connection with any work under this Contract, that ATTORNEY, or ATTORNEY'S associates, subcontractors, or employees, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly or indirectly or through contractual or other arrangements.

XI. INDEMNIFICATION AND HOLD HARMLESS

ATTORNEY AGREES TO INDEMNIFY, DEFEND, AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY ATTORNEY'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION ON THE PART OF ATTORNEY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS,

EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF THE CITY). ATTORNEY'S OBLIGATIONS UNDER THIS SECTION SHALL BE LIMITED TO THE LIMITS OF AVAILABLE COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY ATTORNEY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

XII. NO VERBAL AGREEMENT

This contract contains the entire commitments and agreements of the parties to the Contract. Any verbal or written commitment not contained in this Contract or expressly referred to in this Contract and incorporated by reference will have no force or effect.

XIII. TERMINATION

13.1 The CITY may, at its option and without prejudice to any other remedy it may be entitled at law or in equity, terminate further work under this Contract, in whole or in part, by giving at least ten (10) days prior written notice thereof to ATTORNEY with the understanding that all services being terminated will cease upon the date specified in such notice. The CITY will compensate ATTORNEY in accordance with the provisions of this Contract for the services properly performed prior to the date specified in such notice following inspection and acceptance of same by the CITY.

13.2 CITY reserves the right to terminate the contract immediately in the event the CONTRACTOR fails to:

- 1) Provide employee documentation of legal status upon request by the CITY, or
- 2) Comply with Federal immigration laws.

13.3 ATTORNEY understands and acknowledges that at the time of signing this Contract that CITY has appropriated current funds for only those amounts that are to be spent during the 2008/2009 fiscal year as estimated in Table 3.1 of the Scope of Work. In the event CITY fails to appropriate current funds in any subsequent fiscal year to pay for ATTORNEY's services under this Contract, this Contract shall terminate on September 31 of CITY's then current fiscal year without additional notice without further obligation or liability to CITY except to equitably compensate ATTORNEY in accordance with the provisions of this Contract for the services properly performed on or before the end of the then current fiscal year. CITY agrees to provide ATTORNEY notice not less than ten (10) days prior to the end of the then current fiscal year if CITY intends to not appropriate funds to provide for services under this Contract for the subsequent fiscal year.

13.4 ATTORNEY may, at its option and without prejudice to any other remedy it may be entitled at law or in equity, terminate further work under this Contract, in whole or in part, for non-payment of fees and expenses within 60 days after delivery of an invoice for same or if the CITY has no current appropriated funds available for payment for further work by ATTORNEY, by giving at least ten (10) days prior written notice thereof to the CITY with the understanding that all services being terminated will cease upon the date specified in such notice. The CITY will compensate ATTORNEY in accordance with the provisions of this Contract for the services properly performed prior to the date specified in such notice following inspection and acceptance of same by the CITY.

XIV. VENUE

The parties to this Contract agree and covenant that this Contract is performable in the City of Farmers Branch, Texas, and that exclusive venue will lie in a court of competent jurisdiction in Dallas County, Texas.

XV. INSURANCE

ATTORNEY will, prior to the commencement of work under this Contract, obtain and will continue to maintain at no cost to the CITY, in full force and effect during the term of this Contract, a comprehensive liability insurance policy which will include bodily, death, automobile liability, and property damage coverage. The minimum limit for this coverage will be \$2,000,000 combined single limit for liability and for property damage. ATTORNEY will also obtain and will continue to maintain at no cost to the CITY, in full force and effect during the term of this Contract, a professional liability (errors and omissions) insurance policy placed with a company rated at least B+/X by Best's Key Rating Guide, authorized to do business in Texas, in an amount not less than \$1,000,000. The CITY will be named as an additional insured under such general liability policy and provisions will be given at least thirty (30) days prior notice of any material change in coverage, non-renewal, or of cancellation of such policy, evidenced by return receipt of United States Certified Mail. ATTORNEY will furnish the CITY with original copies of said policies or certificates evidencing such coverage prior to commencement of any work under this Contract.

XVI. APPLICABLE LAWS

This Contract is made subject to the existing provisions of the Charter of the City of Farmers Branch, its rules, regulations, procedures, and ordinances, present and future, and all applicable laws of the State of Texas and the United States.

XVII. CONTRACT INTERPRETATION

The parties to this Contract covenant and agree that in any litigation relating to this Contract, the terms and conditions of the Contract will be interpreted according to the laws of the

State of Texas.

XVIII. NOTICES

All notices, communications, and reports under this Contract must be mailed by first class mail, overnight courier, or by confirmed facsimile transmission or hand delivered to the respective parties at the addresses shown below, or to such other address as either party may designate in writing to the other party, and shall be deemed received three (3) days after delivery in absence of proof of delivery:

| | |
|---------------------------|---|
| If to CITY: | Shane Davis, Landfill Administrator |
| | City of Farmers Branch |
| (Deliveries): | 13000 William Dodson Pkwy |
| | Farmers Branch, TX 75234 |
| (Mailing address): | P.O. Box 819010 |
| | Farmers Branch, TX 75381 |
| (With copy to): | Peter G. Smith |
| | Nichols, Jackson, Dillard, Hager & Smith, L.L.P. |
| | 1800 Lincoln Plaza |
| | 500 North Akard |
| | Dallas, Texas 75201 |
| If to ATTORNEY: | Brent W. Ryan |
| | McElroy, Sullivan & Miller, LLP |
| | P.O. Box 12127 |
| | Austin, TX 78711 |

XIX. SEVERABILITY

In the event that any one or more of the provisions contained in this Contract will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and this Contract will be considered as if such invalid, illegal, or unenforceable provision had never been contained in the Contract.

XX. RIGHT OF REVIEW

ATTORNEY covenants and agrees that the CITY, upon reasonable notice to ATTORNEY, may review any of the work performed by ATTORNEY under this Contract.

XXI. SUCCESSORS AND ASSIGNS

This Contract will be binding upon and inure to the benefit of the parties hereto and their

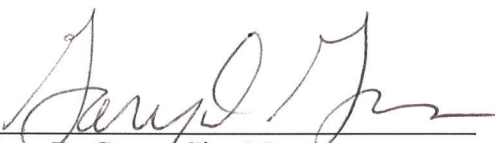
successors, and, except as otherwise provided herein, their assigns.

**XXII.
CAPTIONS**


The captions to the various clauses of this Contract are for informational purposes only and in no way alter the substance of the terms and conditions of this Contract.

SIGNED on this the 22nd day of July, 2009.

CITY OF FARMERS BRANCH, TEXAS:

By: 
Gary D. Greer, City Manager

ATTEST:


Cindee Peters, City Secretary

APPROVED AS TO FORM:


City Attorney

SIGNED on this the 16th day of July, 2009.

McELROY, SULLIVAN & MILLER, L.L.C. and BRENT W. RYAN:

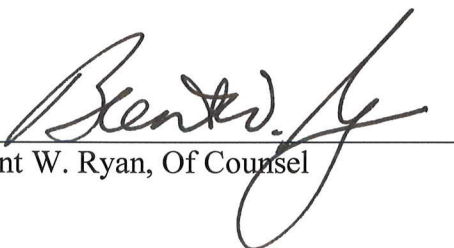
By: 
Brent W. Ryan, Of Counsel

EXHIBIT A

Scope of Work City of Farmers Branch Legal Services Camelot Landfill Expansion

The expansion project for the Camelot Landfill will involve coordinating with and/or seeking permits and other approvals from many regulatory agencies and governmental entities (e.g., TCEQ, FEMA, USACE, FAA, TxDOT, Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, the Texas Historical Commission, and the City of Lewisville). Each of these entities will require and review various permit applications and submittals related to the project. The legally-mandated standards for the necessary site investigations, permit application materials, and review/permitting processes are set out in various provisions of federal and state statutes and regulations. In addition, many of the regulatory agencies and governmental entities that will be involved in the landfill expansion review and approval processes have guidelines, interpretations and precedents that are important in the design and permitting of a municipal solid waste landfill expansion. Throughout the various approval processes for the project, we will work with the City, its technical consultants, and the regulatory agencies and governmental entities to ensure that all of these legal requirements are considered and applied appropriately and satisfied. We will identify issues of special significance for this project and work with the City and its consultants to develop strategies for addressing them. Throughout the process of developing the landfill expansion design and evaluating and seeking the necessary permits and other authorizations, we will work to ensure that the City's reputation and integrity are protected and advanced and we will look for and pursue every available opportunity to resolve issues of concern and third party opposition to the project with the goal of obtaining the approvals necessary for the project in the shortest time and at the least cost to the City of Farmers Branch.

A summary of the legal services tasks and budget estimates for seeking authorizations and approvals from regulatory agencies and governmental entities for the Camelot Landfill Expansion is provided in Table 1. Additional information regarding each of the tasks listed in Table 1 is included below. The estimated annual costs for legal services for the project, based on the current estimated schedule for completion of technical investigations and reports for the project, are presented in Table 2. Hourly rates to be charged for our work are presented in the Schedule of Charges in Table 3.

The two budget estimates provided in Table 1 identify a projected range of costs

for this project. The first estimate provided for each task is based on minimal contingencies. The second estimate represents an upper range of estimated costs that is based on potential additional services that may be required for each task. These cost estimates include all legal fees and direct expenses (overhead, support personnel, copies, travel, telephone, mailing). They do not include mailing or newspaper publication costs for public notices, rental fees for public meeting or hearing rooms, court reporter and transcript fees, or any costs for experts working on the City's behalf.

Development of Permit Strategy and Conceptual Design

This task will involve working with City staff, its technical consultants, and regulatory agency/governmental entity personnel on the development of conceptual designs for various aspects of the landfill expansion project. We will evaluate and provide input on regulatory and permitting applicability, requirements, and implications for various design options that are considered and provide assistance as required to assist in communications and/or negotiations with regulatory agencies/governmental entities and interested third parties regarding legal requirements and resolution of issues and objections.

City of Lewisville Regulatory Issues

This task will include evaluating potentially applicable regulatory requirements of the City of Lewisville to determine their applicability and strategies for compliance. In addition, we will work with Farmers Branch staff and consultants on the preparation of applications and other materials to be submitted to the City of Lewisville and, as requested, represent Farmers Branch in negotiations and hearings related to City of Lewisville requirements

Floodplain Permits

The expansion of the Camelot Landfill will potentially involve activities conducted within the existing 100-year floodplain of the Elm Fork of the Trinity River. This task will include evaluation of regulatory requirements for and assistance with the preparation of authorization requests related to a Trinity River Corridor Development Certificate and a floodplain map revision for the proposed expansion. Additionally, we will participate in negotiations with the applicable regulatory agencies/governmental entities (e.g., Federal Emergency Management Agency, U.S. Army Corps of Engineers, and the City of Lewisville floodplain administrator) and in any public meetings or hearings regarding floodplain authorizations.

USACE Wetland Permitting/Archaeology Survey/ Endangered Species

The expansion of the Camelot Landfill will potentially involve activities in wetlands and/or other areas within the regulatory jurisdiction of the U.S. Army Corps of Engineers under Section 404 of the federal Clean Water Act. In

addition, as part of the process for obtaining required authorizations for the landfill expansion, it will be necessary to investigate and evaluate archaeological conditions and potential impacts to endangered and threatened species. This task includes evaluation of regulatory requirements for and assistance with the preparation of authorization requests and in agency review processes related to a USACE Section 404 development permit, an archaeology investigation, and endangered/threatened species evaluations. We will work with City staff and its technical consultants regarding the scope of investigations and contents of applications and reports, and with regulatory agencies regarding necessary reviews and authorizations.

LFG System/Air Permitting

We will evaluate requirements for landfill gas control and for permitting/other authorizations regarding air emissions, and we will assist in the development of an air permitting strategy for the landfill expansion. We will also assist with the preparation, review, and regulatory agency processes for necessary authorization requests.

State Landfill Permit Major Amendment

Expansion of the Camelot Landfill will require the preparation and submission of a major permit amendment application in accordance with statutory requirements of the Texas Solid Waste Disposal Act and regulatory provisions in TCEQ's rules in Title 30 of the Texas Administrative Code. This task will include the evaluation of TCEQ regulatory requirements to determine their applicability and strategies for ensuring compliance with applicable requirements in the permit amendment application. We will coordinate with and assist City staff and technical consultants in planning investigations to develop regulatorily required information regarding the landfill expansion and participate in the preparation, review, and revision of the various parts of the permit application. We will participate in meetings with staff of the TCEQ and other regulatory agencies whose requirements must be addressed in this application regarding their standards and expectations for application information.

TCEQ Review Process

This task includes working with City staff and its technical consultants and with TCEQ's technical and legal staffs regarding the agency's administrative and technical reviews of information submitted as part of the application process and in the evaluation and discussion/negotiation of issues identified by the agency staff during the application review process. We will also participate in the preparation and review of responses to TCEQ review comments. In addition, we will track and evaluate public comments and contested case hearing requests that may be filed with TCEQ by interested third parties, prepare and coordinate responses to comments and responses to hearing requests, and

participate/represent the City in TCEQ public meetings regarding the permit application and proceedings regarding hearing requests. Finally, we will review and coordinate with TCEQ staff on the language of and requirements regarding legally required notices that will be issued at various stages of the application process and we will review, evaluate, and work with City staff and its technical consultants and TCEQ staff regarding the agency's draft permit and revisions to it. We will also assist in communications and/or negotiations with TCEQ staff and interested third parties regarding legal requirements and resolution of issues of concern and objections

TCEQ/SOAH Hearing Process

The widest ranges in the cost estimates on Table 1 relate to the costs associated with our representation of the City in the TCEQ/SOAH contested case hearing process, which usually results in a multi-day hearing conducted much like a non-jury civil trial in Texas. We estimate that these costs can vary from \$0 (if no contested case hearing regarding the application is held) to \$800,000 (for a major hearing with sophisticated opposition). This task would include attendance at a State Office of Administrative Hearings preliminary hearing to address party status of interested third parties and the development of a schedule for discovery and the evidentiary hearing process. We will work with the City staff, its technical consultants, and other potential witnesses to prepare testimony and documentary evidence and exhibits for the hearing, conduct discovery to investigate the positions of other parties to the hearing, and respond to discovery served by those other parties. We will submit to SOAH the pre-filed testimony and exhibits in support of the permit amendment application, conduct depositions of significant witnesses who will testify on behalf of other parties, and prepare pre-hearing motions and responses to other parties' motions. We will represent the City in the SOAH evidentiary hearing, presenting the City's case and cross-examining witnesses for the other parties. We will prepare and submit post-hearing briefs addressing the issues in the case, review and submit comments on the recommendation (proposal for decision) prepared by the SOAH administrative law judge, and respond to filings by the other parties. Finally, we will represent the City before the TCEQ Commissioners when they consider the proposal for decision at one of their public meetings and we will file post-decision motions and replies as appropriate.

Table 1. Tasks Summary and Budget Estimates

| Task | Budget Estimate Based on Minimal Contingencies | Upper Range Budget Estimate Based on Potential Additional Services |
|---|---|---|
| 1. Development of Permit Strategy and Conceptual Design | \$80,000 | \$125,000 |
| 2. City of Lewisville Regulatory Matters | \$30,000 | \$65,000 |
| 3. Floodplain Permits | \$12,000 | \$43,500 |
| 4. USACE Wetland Permitting/ Archaeology Survey/ Endangered Species | \$25,000 | \$67,500 |
| 5. Gas Management Plan/ Air Permitting/GCCS Planning | \$8,000 | \$20,000 |
| 6. Landfill Permit Amendment Application | \$245,000 | \$315,000 |
| 7. TCEQ Review Process | \$115,000 | \$155,000 |
| Total without TCEQ/SOAH Hearing Process | \$515,000 | \$791,000 |
| TCEQ/SOAH Hearing Process | | |
| • No opposition or requests for hearing | \$0 | \$0 |
| • No hearing due to successful settlement negotiations | \$20,000 | \$50,000 |
| • Minimal hearing based on limited opposition | \$125,000 | \$200,000 |
| • Major hearing that includes sophisticated opposition | \$250,000 | \$800,000 |

Table 2. Estimated Annual Costs

| Fiscal Year | Estimated Costs |
|--|----------------------------|
| 2008/2009 | \$100,000 |
| 2009/2010 | \$250,000 |
| 2010/2011 | \$105,000 |
| 2011/2012 | \$130,000 |
| 2012/2013 | \$180,000 |
| Total without Contingencies¹ | \$765,000 |
| Contingencies (See Table 1) | \$826,000 |
| Total with Contingencies | \$1,591,000 |

¹Includes \$250,000 for the TCEQ/SOAH Hearing Process.

Table 3. Schedule of Charges

ATTORNEYS AND HOURLY BILLING RATES

| | |
|----------------------|-------|
| Matt Baab | \$200 |
| Sandy Buch | \$200 |
| Greg Friend | \$150 |
| Anna Irion | \$150 |
| Clark Jobe | \$200 |
| Mike McElroy | \$275 |
| Dan Miller | \$275 |
| Mickey Olmstead | \$200 |
| John Quinlan | \$200 |
| Brent Ryan | \$250 |
| Brian Sullivan | \$300 |
| Cindy Sullivan | \$200 |
| Paul Tough | \$175 |
| Tom Weber | \$250 |
| Others not to exceed | \$275 |

PARALEGALS AND HOURLY BILLING RATES

| | |
|----------------------|------|
| Ilia Esparza | \$70 |
| Vivian Hernandez | \$85 |
| Jeana Matetszchk | \$70 |
| Mike Paluso | \$85 |
| Lois White | \$85 |
| Others not to exceed | \$85 |