



## **CITY OF FARMERS BRANCH, TEXAS STANDARD FORM PROFESSIONAL SERVICES AGREEMENT**

**Birkhoff, Hendricks, and Cater, L.L.P.**

### **Webb Chapel Road Water and Wastewater Utility Improvements Project**

#### **ARTICLE 1 RECITALS AND INTENT**

1.1 This Agreement ("Agreement") is made by and between the City of Farmers Branch ("City") and **Birkhoff, Hendricks, & Carter, L.L.P.**, ("Professional"), acting by and through their duly authorized representatives, and is effective on the date stated herein.

1.2 The City has requested general architectural, engineering and/or other professional services as assigned, and desires to engage Professional to provide engineering services for the Webb Chapel Road Water and Wastewater Utility Improvements Project. ("Services").

1.3 The City desires to engage the services of Professional as an independent contractor, and not as an employee, to perform the assigned Services under the terms and conditions provided in this Agreement, and Professional desires to render professional services for the City on the terms and conditions provided in this Agreement.

1.4 This Agreement and the obligations of the parties are contained in this document and in any Request for Proposals or Qualifications issued by the City, and the Services and details of performance will be described in task orders.

#### **ARTICLE 2 CONTRACTUAL RELATIONSHIP**

2.1 The City agrees to employ the Professional, and the Professional agrees to perform, as an independent contractor, certain professional services on an as-needed basis pursuant to City-issued task or work orders in accordance with the project described therein.

2.2 This Agreement shall serve as the general agreement for professional services, and each assignment will be defined by a task order, which will define the scope, fee, and schedule for such assignment. Professional may be engaged by the City on a project-by-project basis, at the City's sole option, by task order, and the City's approval of this Agreement shall in no way be interpreted as any guaranty of any work assignment. No Services shall be undertaken or performed by Professional unless the Services have been approved by task order.

2.3 The Services to be provided under this Agreement are intended to include services within the scope of Professional's licensure or registration and may include plan review, plan and project design services, and project supervision and management. The Professional shall also perform additional services as may be requested from time to time by the City. The City shall compensate the Professional as provided in task orders.

#### **ARTICLE 3 PROFESSIONAL'S OBLIGATIONS**

3.1 Professional's obligations may include but are not limited to the following:

3.1.1 The Professional shall provide to the City the professional services and incidental materials specified in the Services assigned.

3.1.2 All Services shall be performed with the professional skill and care ordinarily provided by competent engineers, architects or professionals, as applicable, practicing under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinary

professional skill and care of a competent engineer, architect or professional. Professional will re-perform any Services not meeting this standard without additional compensation.

3.1.3 If, after the performance has begun, an error or omission is discovered and the item can still be provided in the sequence of performance without premium to the City, the City will pay for this item just as if it had been included in the original design documents. If this error or omission is discovered out of sequence with the performance timetable, then the Professional will pay for the premium to have this item corrected or included, while the City will pay for this item as if it had been included in the original documents.

3.1.4 At City's request, Professional shall, promptly following issuance of a task order, submit a Schedule of Work for City's approval, which shall specify the dates and milestones by which the Services covered by the task order will be completed. Professional shall perform the Services in a timely fashion to comply with the City's requirements and in accordance with the approved Schedule of Work.

3.1.5 Professional shall comply with all applicable laws, rules and regulations governing all Services and any projects authorized by this Agreement.

**3.2 Opinions of Probable Construction Cost.** Any opinions or estimates of probable costs to be provided under this Agreement are to be made or reviewed on the basis of the Professional's experience and qualifications and represent the Professional's judgment as an experienced and qualified professional. However, since the Professional 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, Professional cannot and does not guarantee that proposals, bids or actual final construction costs will not vary from the opinions or estimates prepared or reviewed by the Professional.

### 3.3 Services During Construction

#### 3.3.1 Professional's Personnel at Construction Site

a. If included in the Services assigned, Professional shall make visits to the site at intervals appropriate to the various stages of construction, as Professional deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of the work of the construction contractor (the "Contractor").

b. Additionally, if and to the extent included in the assigned Services, Professional shall provide the services of a Project Representative at the site to assist Professional and to provide on-site observations of such work. The furnishing of such Project Representative services will not extend Professional's responsibilities or authority beyond the specific limits set forth in this Agreement. Such visits and observations by Professional and the Project Representative are not intended to be exhaustive, or to extend to every aspect of the work in progress, or to Professional in this Agreement, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on Professional's exercise of professional judgment as assisted by the Project Representative. Based on information obtained during such visits and such observations, Professional shall endeavor to determine, in general, if such work is proceeding in accordance with the construction contract documents ("Contract Documents"), and Professional shall keep City informed of the progress of the work. The Professional shall report to the City any deficiencies in the work of which the Professional has direct knowledge.

3.3.2 Contractor Responsible for Construction Work. The Professional shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of the Contractor. The Professional shall not guarantee the performance of the Contractor nor be responsible for the acts, errors, omissions or the failure of the

Contractor to perform the construction work in accordance with the Contract Documents.

**3.3.3 Construction Progress Payments.** Recommendations by the Professional to the City for periodic construction progress payments to the Contractor will be based on the Professional's knowledge, information and belief from selective observation and sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the Professional to ascertain that the Contractor has completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that the Professional has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work materials or equipment has passed to City free and clear of all liens, claims, security interests or encumbrances; or that there are not other matters at issue between City and Contractor that affect the amount that should be paid.

**3.3.4 Contractor Submittals.** Professional shall review Contractor's shop drawings and other submittals if included in the assigned Services. Such review shall be only for conformance with the information given in the Contract Documents and for compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews will not extend to means, methods, techniques, sequences or procedures of construction, or to safety precautions and programs incident thereto.

**3.3.5 Record Drawings.** Professional shall prepare record drawings if included in the assigned Services. Such record drawings will be based on information furnished by Contractor to Professional showing changes made during construction. The Professional is not responsible for any errors or omissions in the information provided by Contractor that is incorporated into the record drawings.

#### **ARTICLE 4 THE CITY'S RESPONSIBILITIES**

**4.1** The City shall provide to Professional all its criteria and requirements for any Project and all available information pertinent to the Project including previous reports. Professional may reasonably rely upon such information.

**4.2** The City shall arrange for access to and make all provisions for Professional to enter upon public and private property as required for Professional to perform Services under this Agreement.

**4.3** The City will obtain, arrange and pay for all advertisements for bids; all permits and licenses required for the Project; and all land, easements, rights-of-way and access necessary for the Professional's Services under this Agreement or for performance of the Services.

**4.4** The City will examine Professional's studies, reports, sketches, drawings, specifications, proposals and other information submitted by Professional, consult with others as City deems appropriate, and render timely written approvals and decisions to the Professional.

**4.5** The City shall give prompt written notice to Professional whenever City becomes aware of any development that affects the scope or timing of Professional's Services or of any defect or nonconformance in the Services of the Professional or work of the Contractor.

#### **ARTICLE 5 PROFESSIONAL'S COMPENSATION**

**5.1** In complete compensation for all the Services, the City shall pay to the Professional the compensation set forth in each task order. The Professional's compensation shall not exceed the sum set forth in the task order, which may be prorated on a daily basis in the event of a termination of this Agreement or a work stoppage ordered by City.

**5.2** Invoices for Services performed under a task order will be submitted to City by Professional monthly, and shall detail the work and services performed for which compensation is requested. Invoices will be due and payable within thirty (30) days after receipt. When appropriate, invoices shall include any changes or updates to the approved Schedule of Work.

5.3 No statement, term or provision in any invoice, bill or statement submitted to City by Professional will be construed to waive, amend or modify any term or provision of this Agreement or any task order.

5.4 The City may make changes within the general assigned Services in a task order. If such changes affect the Professional's cost of or time required for performance of the Services, an equitable adjustment will be made through a written amendment to the task order.

## **ARTICLE 6 INDEMNIFICATION**

6.1 With respect to claims brought by third parties against either Professional or the City relating to the Services, the property or facilities to which this Agreement pertains, or regarding claims made by Professional against City, Professional and the City agree as follows:

6.1.1 Professional will indemnify, defend and hold harmless the City, its officials, officers, agents and employees against claims, demands or causes of action; and all costs, losses, liabilities, expenses and judgments incurred in connection therewith, including attorneys' fees and court costs, brought by any of Professional's employees or representatives, or by any other third party, based upon, in connection with, resulting from, arising out of, or occasioned by the negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Professional or the Professional's agent, consultant under contract, or another entity over which the Professional exercises control. Professional shall further reimburse the City its reasonable attorney's fees in proportion to Professional's liability.

6.1.2 It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the City provide written notice of a third-party claim, demand or cause of action as soon as practical, after written notice of such third-party claim, demand or cause of action is received by the City. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall

thereafter have the right to participate in the investigation, defense and resolution of such third-party claim.

6.1.3 Notwithstanding any provision of this article, the City shall in no event be liable or responsible to the Professional or any third party to the extent that the City has immunities or defenses, and nothing in this article or this section or this Agreement shall be deemed in any way as a waiver of any defenses or immunities, whether governmental, sovereign, official, qualified, legislative or otherwise, all such defenses and immunities being hereby expressly retained. Nothing in this Agreement shall be deemed in any way to grant or confer any right, title or interest in or to any person not a party to this Agreement.

6.2 THERE IS NO LIMITATION OF PROFESSIONAL'S LIABILITY AND NONE WILL BE ACKNOWLEDGED, AGREED TO OR OTHERWISE RECOGNIZED IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES PROVIDED BY PROFESSIONAL, REGARDLESS OF ANY TERM OR PROVISION CONTAINED WITHIN ANY OTHER DOCUMENT THAT MAY FORM A PART OF THE AGREEMENT BETWEEN THE CITY AND PROFESSIONAL.

## **ARTICLE 7 INSURANCE**

7.1 The Professional shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.

7.2 The Professional shall, upon request by the City, furnish certificates of insurance to the City evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of the Professional, name of insurance company, policy number, term of coverage and limits of coverage. The Professional shall cause its insurance companies to provide the City with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. The Professional shall obtain such insurance from such companies having a Best rating of B+/VII or better, licensed or approved to

transact business in the state in which the Services shall be performed, and shall obtain such insurance of the following types and minimum limits:

a. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state of hire/location of Services, and Employer's Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease; \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.

b. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability, Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000 general aggregate limit  
2,000,000 each occurrence, combined single limit  
1,000,000 aggregate Products, combined single limit  
1,000,000 aggregate Personal Injury/Advertising Liability  
50,000 Fire Legal Liability  
50,000 Premises Medical

c. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

d. Professional Liability insurance with limits not less than \$2,000,000 each claim/annual aggregate.

7.3 The minimum limits may be increased by the City based on project-specific needs, or specific coverages may be waived by express provision in task orders. The City and the City's agents and employees shall be added as additional insureds to all coverage required above, except for Workers Compensation and Professional Liability insurance. All policies written on behalf of the Professional shall contain a waiver of subrogation in favor of the City and the City's agents and employees.

## ARTICLE 8 DURATION, EXTENSION AND TERMINATION

8.1 This agreement shall be for a term of one (1) year and, if not terminated by City, shall automatically renew for additional terms of one (1) year. Time is of the essence in the performance of this Agreement.

8.2 This agreement may be terminated by either party for convenience upon thirty (30) days written notice or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) business days of written notice and diligently complete the correction thereafter. Upon delivery of such notice, the Professional shall, unless the notice states otherwise, immediately discontinue all Services, proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Services, and deliver to the City all instruments of service produced under this Agreement. Upon termination, the City will owe the Professional for all compensation earned under this Agreement to date of termination, without termination expenses.

## ARTICLE 9 OWNERSHIP OF DOCUMENTS

9.1 All documents including but not limited to reports, drawings and specifications, provided or furnished by Professional pursuant to this Agreement are instruments of service in respect to the Project, whether or not the Project is completed, and shall be the property of the City. The City shall have, keep and retain all rights, title and interest in and to all Instruments of Service, including all ownership, common law, statutory, and other reserved rights, including copyrights, in and to all Instruments of Service, whether in draft form or final form, which are produced at its request and in furtherance of this Agreement. The Professional shall endeavor to omit any information in the Instruments of Service which may constitute trade secrets. If any portion of the documents comprising the Instruments of Service have been previously copyrighted or otherwise protected from disclosure or unauthorized use by the Professional which have previously been prepared by the Professional and which are not created for the sole and specific purpose of this Project, such copyright protections or

reservations of rights shall be expressly stated thereon.

9.2 When such documents are in electronic form, the City shall own copies of data files, text, specifications or drawings for the City's information in its use of the Services. However, due to the potential that electronic information can be modified by the City or other persons, unintentionally or otherwise, Professional reserves the right to remove all indicia of its ownership and/or involvement from each electronic display or file. For documentation purposes, the original computer files will be retained by Professional for a period not to exceed five (5) years after completion of the Services. Thereafter, all such files shall be remitted to the City.

9.3 In addition, electronic information created and produced by Professional is considered a part of Professional's instrument of service and will not be used by the City on other Services, for additions to this Service, or for completion of this Service by another design professional except by agreement or Professional's default.

9.4 Any such use or reuse of any instrument of service by the City or others without written verification or data adaptation by Professional for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Professional.

#### ARTICLE 10 LIMITATIONS ON RIGHTS AND REMEDIES

10.1 Professional and City agree that neither of them shall be responsible or liable to the other for the consequences of events that are beyond the reasonable control of the other party including, but not limited to, interference by third parties, changed conditions, epidemics, labor strikes, fires, thefts or other losses, or acts of God.

10.2 If no environmental assessments are included within the scope of work, the Professional shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, except prompt notice to the City upon discovery.

#### ARTICLE 11 NO THIRD-PARTY RIGHTS

11.1 Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either City or Professional.

11.2 The Services to be performed by the Professional under this Agreement are solely for the benefit of the City. This Agreement shall not be construed as creating any contractual relationship of any kind between the Professional and any third party. It is the intent of the parties that there are no third-party beneficiaries to this Agreement. The fact that the City may enter into other agreements with third parties that provide the Professional the authority to observe the work being performed by the third party shall not give rise to any duty or responsibility on the part of the Professional in favor of such third party.

#### ARTICLE 12 PROHIBITIONS

12.1 Prohibition on Boycott Israel. The Professional verifies that it does not Boycott Israel, and agrees that during the term of this Contract will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. For purposes of this verification, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

12.2 Iran, Sudan and Foreign Terrorist Organizations. The Professional represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/procurement/procurement-policies/>  
against.pdf.



<https://comptroller.texas.gov/purchasing/docs/ifa-est.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/ifa-est.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law and excludes the Professional and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Professional understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Professional and exists to make a profit.

**12.3 Prohibition on Boycott Energy Companies.** Professional verifies that it does not Boycott Energy Companies and agrees that during the term of this Contract will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Contract has a value of \$100,000.00 or more to be paid under the terms of this Contract.

**12.4 Critical Infrastructure.** In accordance with Chapter 2274, Texas Government Code, the City may not enter into a contract or agreement with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more (1) if the company would be granted direct or remote access to or control of critical infrastructure in Texas, excluding access specifically allowed by the City for product warranty and support purposes and (2) if the City knows the company is (A) owned by or the a majority of stock or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country or (ii) a company or other entity, including a governmental entity, that is owned or controlled

by citizens of or is directly controlled by the government of such countries, or (B) headquartered in such countries. The signatory executing the Contract on behalf of Vendor represents that neither Vendor nor any of its parent companies, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates is a company of which the City may not contract pursuant to Section 2274.0102, Texas Government Code. The foregoing verification is made solely to comply with Section 2274.0102, Texas Government Code.

**12.5 Prohibition on Discrimination Against Firearm Entities And Firearm Trade Associations.**

Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Contract has a value of \$100,000.00 or more to be paid under the terms of this Contract. However, this prohibition does not apply: (i) if Professional is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

**ARTICLE 13  
MISCELLANEOUS**

**13.1** This Agreement shall be effective upon its execution by the Professional and the City, subject to task orders, and shall remain in full force until all obligations under this Agreement have been fulfilled, unless sooner terminated as provided herein.

**13.2** This Agreement shall be construed and enforced for all purposes pursuant to the laws of the State of Texas. Venue shall be exclusively in the state courts of proper jurisdiction of Dallas County, Texas.

**13.3** This Agreement is non-assignable. Neither the Professional nor the City shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other

13.4 This Agreement, which expressly incorporates and includes the City's Request for Proposals or Qualifications, represents the entire agreement between the Professional and the City with respect to the subject matter hereof and supersedes and merges all prior negotiations, representations, discussions or agreements, either written or oral, with respect to the subject matter hereof.

13.5 No statement, term or provision in any proposal, response to any Request for Proposal or Qualifications, Statement of Qualifications, general conditions, invoice, bill or statement submitted by Professional to City will be construed to waive, amend or modify any term or provision of this Agreement.

13.6 This Agreement may be amended only by written instrument signed by duly authorized representatives of both the Professional and the City. The City's payment of invoices or statements shall not be deemed as the City's acceptance of any term or provision that amends or modifies this Agreement or the task order under which payment is made.

13.7 No consent or waiver, express or implied, by either party to this Agreement, to or of any breach of default by the other in the performance of any obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of any party to this Agreement to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

13.8 If a provision of this Agreement, or the application thereof to any person or

circumstances, is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Agreement in the event any provision hereof is declared illegal, invalid or unenforceable.

13.9 All notices required or permitted hereunder shall be in writing and shall be deemed delivered three (3) days after deposit with the United States Postal Service, certified mail, return receipt requested, addressed to the respective other party at the addresses shown below:

If to Professional: Birkhoff, Hendricks, Carter,  
L.L.P.,  
11910 Greenville Ave., Suite  
600 Dallas, Texas 75243  
Attn: John W. Birkhoff, P.E.

If to City: City of Farmers Branch  
13000 William Dodson Pkwy  
Farmers Branch, Texas 76234  
Attn: City Manager

13.10 The headings and captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

13.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.



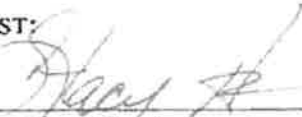
IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth.

SIGNED AND AGREED this 22<sup>nd</sup> day of October, 2024.

CITY OF FARMERS BRANCH, TEXAS

By:   
Benjamin W. Williamson, City Manager

ATTEST:

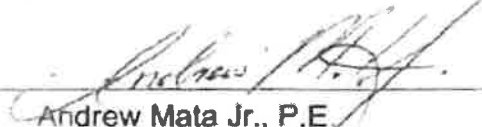
By:   
Stacy Henderson, City Secretary

APPROVED AS TO FORM:

  
David M. Berman, City Attorney  
Whitt L. Wyatt

SIGNED AND AGREED this 23rd day of July, 2024.

BIRKHOFF, HENDRICKS, & CARTER, L.L.P.

By:   
Andrew Mata Jr., P.E.  
Alternate Managing Partner

ATTEST:

By: 