

AGREEMENT FOR ENGINEERING & DESIGN SERVICES

for

The Wastewater Treatment Plant FRP Launder Covers

This Agreement is made and entered into in Deer Park, Harris County, Texas on this 18th day of June, 2019; by and between

The City of Deer Park, a Municipal Corporation in the State of Texas

And

CDM Smith ENGINEER(s) duly licensed, and practicing under the laws of the State of Texas.

Said Agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the Engineer for engineering services hereinafter set forth in connection with the above-designated Project for the City of Deer Park.

DEER PARK retains **CDM Smith** to perform engineering services related to the design and construction of a Waste Water Treatment Plant's FRP Launder Covers in return for consideration to be paid by DEER PARK under terms and conditions set forth below.

ARTICLE 1. SCOPE OF WORK

- 1.1 ENGINEER will provide engineering, design, consultation, project management, and other services as required to perform and complete the Scope of Work & Services specifically identified in Exhibit A of this Agreement. The Services Scope of Work (the "Work") and the time schedules set forth in Exhibit A are based on information provided by DEER PARK and ENGINEER. The schedule of milestones and deliverables are essential terms of this Agreement.
- 1.2 If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by DEER PARK, or if DEER PARK directs ENGINEER to change the original Scope of Work shown in Attachment A, a written amendment equitably adjusting the costs, performance time and/or terms and conditions, shall be executed by DEER PARK and ENGINEER.

ARTICLE 2. COMPENSATION

- 2.1 ENGINEER bills for its services on a time and materials basis using the Schedule of Rates and Terms entitled Estimated Level of Effort ("Schedule of Rates") attached as Exhibit A of this Agreement. As requested, ENGINEER has provided an estimate of the fees for the Work amounting to **\$19,000.00** ENGINEER will not exceed that estimate without prior approval from DEER PARK. ENGINEER will notify DEER PARK, for approval, of any proposed revisions to the Schedule of Rates and effective date thereof which shall not be less than thirty (30) days after such notice.
- 2.2 ENGINEER will submit monthly invoices for Services rendered, and DEER PARK will make payment within thirty (30) days of receipt of ENGINEER'S invoices. If DEER PARK objects to all or any portion of an invoice, it will notify ENGINEER of the same within fifteen (15) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice. Prices or rates quoted do not include state or local taxes.

ARTICLE 3. DEER PARK'S RESPONSIBILITIES

- 3.1 DEER PARK will designate in writing the person or persons with authority to act on DEER PARK'S behalf on all matters concerning the work to be performed.
- 3.2 DEER PARK will furnish to ENGINEER all existing studies, reports, data and other information available to DEER PARK necessary for performance of the Work, authorize ENGINEER to obtain additional data as required, and furnish the services of others where necessary for the performance of the Work. ENGINEER will be entitled to use and rely upon all such information and services.
- 3.3 Where necessary to performance of the Work, DEER PARK shall arrange for ENGINEER to have access to any site or property.

ARTICLE 4. PERFORMANCE OF SERVICE

- 4.1 ENGINEER'S services will be performed within the schedule and time period set forth in Exhibit A.
- 4.2 ENGINEER shall perform the Work, and any additional services as may be required, for the development of the Project to completion.
- 4.3 If required, additional services will be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.

- 4.4 If any time period within or date by which any of ENGINEER's services are to be performed is exceeded for reasons outside of ENGINEER's reasonable control, all rates, measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.

ARTICLE 5. CONFIDENTIALITY

- 5.1 ENGINEER will hold confidential all information obtained from DEER PARK, not previously known by ENGINEER or in the public domain.

ARTICLE 6. STANDARD OF CARE & WARRANTY

- 6.1 Standard of Care. In performing services, ENGINEER agrees to exercise professional judgment, made on the basis of the information available to ENGINEER, and to perform its engineering services with the professional skill and care of competent design professionals practicing in the same or similar locale and under the same or similar circumstances and professional license. ENGINEER also agrees to perform its engineering services as expeditiously as is prudent considering this standard of care. This standard of care shall be judged as of the time and place the services are rendered, and not according to later standards.
- 6.2 Warranty. If any failure to meet the foregoing standard of care Warranty appears during one year from the date of completion of the service and ENGINEER is promptly notified thereof in writing, ENGINEER will at its expense re-perform the nonconforming work.
- 6.3 The foregoing Warranty is the sole and express warranty obligation of ENGINEER and is provided in lieu of all other warranties, whether written, oral, implied or statutory, including any warranty of merchantability. Engineer does not warrant any products or services of others. ENGINEER, however, expressly acknowledges that these warranty obligations do not eliminate the applicability of the standard of care to all of its work and that the OWNER may still retain remedies against ENGINEER following the expiration of the warranty period in contract, tort, or otherwise as the law allows.

ARTICLE 7. INSURANCE

- 7.1 ENGINEER will procure and maintain insurance as required by law. At a minimum, ENGINEER will have the following coverage:
- (1) Workers compensation and occupational disease insurance in statutory amounts.
 - (2) Employer's liability insurance in the amount of \$1,000,000.

- (3) Automobile liability in the amount of \$1,000,000.
- (4) Commercial General Liability insurance for bodily injury, death or loss of or damage to property of third persons in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate.
- (5) Professional errors and omissions insurance in the amount of \$1,000,000.

7.2 ENGINEER has provided a Statement of Insurance to DEER PARK demonstrating and reflecting that ENGINEER has procured and maintains insurance coverage in accordance with the requirements stated above. That Statement of Insurance is Attachment C of this Agreement.

ARTICLE 8. INDEMNITY

8.1 THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, BUT ONLY TO THE EXTENT THAT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER OR THE ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDENMIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEERS LAIBILITY.

8.2 ENGINEER agrees to and shall contractually require its consultants and subcontractors of any tier to assume the same indemnification obligations to Indemnities as stated herein.

ARTICLE 9. OWNERSHIP OF DOCUMENTS

9.1 As long as DEER PARK is current in the payment of all undisputed invoices, all work product prepared by the ENGINEER pursuant to this Agreement, including, but not limited to, all Contract Documents, Plans and Specifications and any computer aided design, shall be

the sole and exclusive property of DEER PARK, subject to the ENGINEER's reserved rights.

- 9.2 ENGINEER's technology, including without limitation customary techniques and details, skill, processes, knowledge, and computer software developed or acquired by ENGINEER or its Consultants to prepare and manipulate the data which comprises the instruments of services shall all be and remain the property of the ENGINEER.

ARTICLE 10. INDEPENDENT CONTRACTOR

- 10.1 The ENGINEER is an independent contractor and shall not be regarded as an employee or agent of the DEER PARK.

ARTICLE 11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 11.1 The ENGINEER shall observe all applicable provisions of the federal, state and local laws and regulations, including those relating to equal opportunity employment.

ARTICLE 12. SAFETY

- 12.1 DEER PARK shall inform the ENGINEER and its employees of any applicable site safety procedures and regulations known to DEER PARK as well as any special safety concerns or dangerous conditions at the site. The ENGINEER and its employees will be obligated to adhere to such procedures and regulations once notice has been given.
- 12.2 ENGINEER shall not have any responsibility for overall job safety at the site. If in ENGINEER's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, ENGINEER may immediately suspend performance until such safety standards can be attained. If within a reasonable time site operations or conditions are not brought into compliance with such safety standards, ENGINEER may in its discretion terminate its performance, in which event, DEER PARK shall pay for services and termination expenses as provided in Article 18.

ARTICLE 13. LITIGATION

- 13.1 At the request of DEER PARK, ENGINEER agrees to provide testimony and other evidence in any litigation, hearings or proceedings to which DEER PARK is or becomes a party in connection with the work performed under this Agreement, unless DEER PARK and the ENGINEER are adverse to one-another in any such litigation.

- 13.2 Any litigation arising out of this Agreement between DEER PARK and ENGINEER shall be heard by the state district courts of Harris County.

ARTICLE 14. NOTICE

- 14.1 All notices to either party by the other shall be deemed to have been sufficiently given when made in writing and delivered in person, by electronic mail, facsimile, certified mail or courier to the address of the respective party or to such other address as such party may designate.

ARTICLE 15. TERMINATION

- 15.1 The performance of work may be terminated or suspended by DEER PARK, for any reason. Such suspension or termination shall be subject to notice of DEER PARK's election to either suspend or terminate the Agreement fifteen (15) days' prior to the effective suspension or termination date. The Notice shall specify the extent to which performance of work is suspended or terminated and the date upon which such action shall become effective. In the event work is terminated or suspended by DEER PARK prior to the completion of services contemplated hereunder, ENGINEER shall be paid for (i) the services rendered to the date of termination or suspension and reasonable services provided to effectuate a professional and timely project termination or suspension.

ARTICLE 16. SEVERABILITY

- 16.1 If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ARTICLE 17. WAIVER

- 17.1 Any waiver by either party or any provision or condition of this Agreement shall not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition, unless such waiver is so expressed in writing and signed by the party to be bound.

ARTICLE 18. GOVERNING LAW

- 18.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Texas.

ARTICLE 19. CAPTIONS

- 19.1 The captions contained herein are intended solely for the convenience of reference and shall not define, limit or affect in any way the provisions, terms and conditions hereof or their interpretation.

ARTICLE 20. ENTIRE AGREEMENT

- 20.1 This Agreement, its articles, provision, terms, and attached Schedules represent the entire understanding and agreement between DEER PARK and ENGINEER and supersede any and all prior agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both parties.

This Agreement is effective on the last day signed.

CDM Smith

By _____

Name _____

Title _____

Date _____

The City of Deer Park

By _____

Name _____

Title _____

Date _____



11490 Westheimer Road Suite 700
Houston, Texas 77077
tel: 281 423-7300
fax: 281 589-8295

June 7, 2019

W.R. (Bill) Pedersen, P.E.
Director of Public Works
City of Deer Park
710 E. San Augustine
Deer Park, Texas 77536

Subject: Proposal for Engineering Support Services for FRP Launder Covers
for Deer Park WWTP

Dear Mr. Pedersen:

CDM Smith has developed the following proposal and scope of work based on discussions with you regarding the City's recent efforts to purchase fiberglass reinforced plastic (FRP) clarifier launder covers from qualified vendors. Based on recent quotes obtained by the City, we understand the project value requires the City to publicly bid the project. This proposal includes our services to assist the City in obtaining bid prices for the FRP launder cover system that will be installed by others. We expect that the current Phase II construction contractor, LEM, will submit a price to install the FRP launder covers furnished by the selected vendor. The following describes our scope of services, schedule and proposed fee based on our understanding of the project as recently discussed.

Detailed descriptions of each of these tasks are included below:

Task 1: FRP Launder Specification

A single FRP launder cover specification section will be prepared so the City can publicly bid the furnishing and delivery of the FRP launder covers for the City's three clarifiers; two 90-foot diameter and one 100-foot diameter clarifier. The specification section will be performance-based and include design intent, minimum acceptance criteria, and require the selected vendor/manufacturer to be responsible for all aspects of the launder cover system design necessary for complete and operable installation by the current site construction contractor LEM.

The specification will require the selected vendor to submit certified shop and erection drawings, stamped by a Texas Professional Engineer, showing all important details of construction, panel layout and panel dimensions, supporting framing, gasketing, hatches, method of attachment including the location, size, and weight of all anchor bolts and fasteners, and all aspects of the cover design, appurtenances and appurtenance hardware.



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Task 2: Contract Documents and Bidding Support

CDM Smith will prepare contract documents for bidding including an invitation to bid, general conditions and related front-end contract documents so the City can publicly bid project. We have assumed that the contract documents used for the current Phase II Improvements to the Deer Park WWTP will be used unless a substitute contract document is provided by the City at the start of this effort.

We have assumed that the bidding process will be initiated and managed by the City. CDM Smith has included 12 hours for bidding support services including reviewing and/or responding to bidder questions and preparation of an addendum (if required) during bidding. The City will use the CIVCAST cloud-based online bidding system. The City will provide the clarifier record drawings and related information to prospective vendors during bidding.

Task 3: FRP Launder Cover Submittal Review

The City has requested that CDM Smith review the selected vendor's FRP launder cover submittal package. CDM Smith will review the submittals for general compliance with the technical specifications. We have assumed three total submittal reviews including the initial submittal and two resubmittals by the selected vendor.

Task 4: RFP Preparation and CM Support

CDM Smith will provide out-of-scope limited construction management support to our current Phase II project contract to solicit a request for proposal from LEM Construction to install the FRP launder cover systems to be provided by the selected vendor. CDM Smith has included 24 hours of engineering support and construction management services for this out-of-scope item. CDM Smith shall not provide any services beyond the hour estimate provided herein. If the City and LEM cannot agree to an acceptable price for this change order, additional contract document preparation or solicitation shall be the City's responsibility.

Exclusions

This proposal has been prepared based on our understanding of the limited services requested by the City and exclude the following items:

- Design of safety systems or fall protection for future access to the above-ground installed launder covers. The City has indicated that the scope of this effort shall not include any separate access platforms or stairs to access, inspect, or maintain the clarifier launders or covers. The City has indicated that they will be responsible for developing a plan for future safe access to the installed launder covers.
- Permitting and regulatory support or submittals
- Cost estimates
- Record drawings
- Any other item not specifically listed in tasks 1, 2, 3, and 4 above



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Compensation for Amended Services

CDM Smith proposes to be compensated on a lump sum basis for Task 4: Design Services During Construction in the amount of \$19,000, which has been developed based upon the subtasks totals presented in **Table 1**. This work will be completed under the contract dated October 20, 2015. CDM Smith is requesting Amendment #3 for an additional \$19,000 to complete the services listed in this proposal raising the overall NTE for the contract to \$2,883,325.00 as detailed in **Table 2**.

CDM Smith will prepare a draft FRP launder cover technical specification and contract documents for City review within 30 days of a signed contract or amendment.

We appreciate this opportunity to be of service to the City. Please contact me if you have any questions on this proposal.

Sincerely,

A handwritten signature in blue ink that reads "Amber M. Batson". The signature is written in a cursive, flowing style.

Amber M. Batson, P.E.
Client Service Leader
CDM Smith Inc.
TBPE Firm Registration No. F-3043

cc: Jennifer Harrison, File – CDM Smith





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Table 1: Summary of Costs by Subtask

TASK	BUDGET
4.1: FRP Launder Cover Specification Section	\$3,500
4.2: Contract Documents and Bidding Support	\$7,000
4.3: FRP Launder Cover Submittal Reviews	\$3,000
4.4: RFP/Construction Management Support	\$5,000
4.5: Expenses	\$500
TOTAL	\$19,000

Table 2: Summary of Original and Amended Task Budgets

TASK NO.	TASK DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT NO. 1	AMENDMENT NO. 2	AMENDMENT NO. 2	TOTAL AMOUNT
	<u>Basic Services</u>					
1	Preliminary Design	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED
2	Final Design	\$1,113,300	\$0	\$0	\$0	\$1,113,300
3	Bidding Services	\$79,520	\$0	\$0	\$0	\$79,520
4	Design Services During Construction	\$397,605	\$15,000	\$0	\$19,000	\$431,605
	<i>Subtotal Basic Services</i>	<i>\$1,590,425</i>	<i>\$15,000</i>	<i>\$0</i>	<i>\$19,000</i>	<i>\$1,624,425</i>
5	<u>Additional Services</u>					
A.	Construction Materials Testing	\$59,500	\$30,000	\$0	\$0	\$89,500
B.	Record Drawings	\$43,000	\$0	\$0	\$0	\$43,000
C.	Construction Admin/Inspection	\$416,000	\$274,000	\$0	\$0	\$690,000
D.	Warranty Support	\$21,500	\$0	\$0	\$0	\$21,500
E.	Specialty Inspection Services	-	\$50,000	\$0	\$0	\$50,000
F.	Contractor Back-Charge Allowance	-	\$75,000	\$0	\$0	\$75,000
6	Applications Engineering for Implementation of the New SCADA System	-	-	\$289,900	\$0	\$289,900
	Total Amount	\$2,130,425	\$444,000	\$289,900	\$19,000	\$2,883,325

