

**AMENDMENT NO.: 3  
TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

This Amendment No.: 3 is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 to the Task Order No. 1 made as of November 24, 2020 (“Task Order”) under the Master Agreement for On-Call Professional Services between the Town of Apex (“OWNER”) and CDM Smith Inc. (“ENGINEER”) dated September 4, 2018 (“Master Agreement”).

WHEREAS, OWNER and ENGINEER entered into the Agreement for the Sunset Hills Lift Station Improvements Project (“Project”), and

WHEREAS, the parties desire to amend the Task Order so as to amend the scope of work, time periods of performance and payment, and/or responsibilities of ENGINEER; and

WHEREAS, the Task Order provides that any amendments shall be valid only when expressed in writing and signed by the parties.

NOW THEREFORE, in consideration of the mutual understandings and Agreements contained herein, the parties agree to amend the Task Order as follows:

1. The Basic Services of ENGINEER as described in the Task Order are amended and supplemented as follows:

Additional Bidding, Construction Administration, and Resident Project Representative (RPR) services as identified in attached Exhibit A.

2. The responsibilities of OWNER as described in the Task Order are amended and supplemented as follows:

See Exhibit A.

3. The time periods for the performance of ENGINEER’s services as set forth in the Task Order are amended and supplemented as follows:

ENGINEER to begin within one (1) week of receiving OWNER’s Notice to Proceed (NTP) and prepare an updated detailed schedule within the first fifteen (15) calendar days after NTP or as directed by the OWNER

4. The payment for services rendered by ENGINEER shall be as set forth below:

ENGINEER’s compensation under this Amendment 3 is on a lump sum basis. The fee for the Amendment is a not to exceed amount (NTE) of \$304,500, for Engineering Services for Bidding and Construction as listed in the attached Exhibit A.

Current Contract Value: \$667,375 (Includes Amendment 1 & 2)  
Add Amendment 3: \$304,500  
New Contract Value: \$971,875

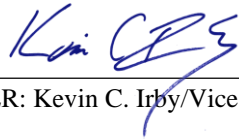
5. Except as herein modified, all terms and conditions of the Task Order shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date indicated above for the purpose herein expressed.

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OWNER

DATE:

A handwritten signature in blue ink, appearing to read "Kevin C. Irby", is written over a horizontal line.

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ENGINEER: Kevin C. Irby/Vice President

DATE: 01/18/2024

**EXHIBIT A  
AMENDMENT NO. 3  
TO AGREEMENT BETWEEN OWNER AND ENGINEER  
January 18, 2024**

This is an exhibit attached to and made a part of and incorporated by reference into the Original Agreement, dated July 27, 2021 between CDM Smith Inc. (ENGINEER) and Town of Apex (OWNER) for professional services.

**1.0 ENGINEER'S SERVICES**

ENGINEER has completed Final Design (Task 800) and Permitting (Task 900) for the Sunset Hills Lift Station (SHLS) and is currently providing professional services in support of Bidding (Task 1000) and Construction Administration (Task 1100) of the Sunset Hills Lift Station Upgrades (the Project) as part of Amendment No. 2, which includes design, permitting, bidding, construction administration, start-up services, and record drawings. OWNER has requested ENGINEER provide part-time Resident Project Representative (RPR) services during the construction phase of the Project.

The following describes the additional services to be provided.

**2.0 WORK SUMMARY**

Under this Amendment No. 3, ENGINEER proposes to provide the additional services for the Project. The work will consist of:

1. Additional Project Management and Construction Administration for extended construction period
2. Additional Bidding Period
3. Providing part-time Resident Project Representative (RPR) services

**3.0 SCOPE OF WORK**

ENGINEER will provide the following additional services under the previous Amendment No. 1 Tasks, and new RPR task:

- Task 500 – Project Management and Meetings
- Task 1000 – Bidding and Award
- Task 1100 – Construction Contract Administration
- Task 1400 – Resident Project Representation

A description of each of the tasks above is provided below. Additional services may be provided by the ENGINEER upon separate written authorization from the OWNER for a mutually agreed upon scope and budget.

## **Task 500 – Project Management and Meetings**

The project management task includes those activities involved with the detailed planning and subsequent monitoring and control of the Amendment No. 3 additional services. In addition to the ENGINEER's normal in-house staff management, document control, job tracking procedures, and invoicing.

This task also includes quality control where the ENGINEER will undertake quality control activities in accordance with the ENGINEER's Quality Management System (QMS) that includes additional monthly reviews and project status reporting, communication plans, and independent specialist reviews.

## **TASK 1000 – Bidding and Award**

The ENGINEER shall provide services for an additional bidding phase under the same assumptions as Amendment No. 1. Under this task, ENGINEER will re-distribute bid packages to prospective bidders, issue addenda, and attend bid opening as needed.

## **TASK 1100 – Construction Contract Administration**

The ENGINEER shall provide services related to this Amendment No. 3 for Contract Construction Administration services under the same assumptions as Amendment No. 1. The following additional services are included:

- Additional three (3) months Construction Administration services. Based upon 15-month final completion date (extended from 12 month assumed duration in Amendment 1 from issuance of Contractor Notice-to-Proceed (NTP) to Final Completion).
  - Three (3) additional monthly progress meetings, and applications for payment
  - Fifteen (15) additional half-day construction observation site visits for additional construction duration
  - One (1) additional field order, change order, and work change directive
- Additional daily and weekly project coordination and management of RPR including review of and distribution of daily report, coordination of payment requests and other tasks outlined in Task 1400

## **TASK 1400 – RESIDENT PROJECT REPRESENTATION**

This Agreement includes one Resident Project Representative (RPR) budgeted at 20 hours/week for 15 months (65 weeks) of the assumed final construction period, which includes 1,300 regular time hours. An amendment or additional services will be required if the budget is exceeded for this Task.

Through more extensive on-site inspections of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall use reasonable effort 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 inspections 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 procedures 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 except as expressly provided herein.

At the request of the OWNER, the RPR services are provided on part-time basis and will not be provided during the entire construction period. Therefore, the RPR's Duties and Responsibilities are limited and shall only provide the following tasks while the RPR is on-site.

### **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 dealing with Contractor's 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.

### **Duties and Responsibilities of RPR**

**Schedules:** RPR shall review the progress schedule, schedule of Shop Drawing submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

**Conferences and Meetings:** RPR shall 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.

**Liaison:** RPR shall 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.

RPR shall assist in obtaining from OWNER additional details or information when required for proper execution of the work.

### **Shop Drawings and Samples**

RPR shall 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.

### **Review of Work, Rejection of Defective Work, Inspections and Tests**

RPR shall observe the work in progress to assist ENGINEER in determining if the work is proceeding in accordance with the Contract Documents.

RPR shall report to ENGINEER whenever RPR believes that any work will not produce a completed Project that conforms 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 the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

RPR shall 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.

RPR shall accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

RPR shall coordinate and review the results of tests made by the independent soils and materials testing laboratory.

RPR shall report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

RPR shall 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.

### **Records**

RPR shall maintain at the job site orderly electronic files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Changes, 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.

RPR shall prepare a daily report, 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.

RPR shall record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

### **Reports**

RPR shall 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. RPR shall consult with ENGINEER in advance of scheduled major tests, inspection, or start of important phases of the work.

RPR will assist with drafting proposed Change Orders and Work Change Directives obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders. RPR shall report immediately to ENGINEER and OWNER the occurrence of any accident.

### **Payment Requests**

RPR shall review Applications for Payment with Contractor for compliance with the established procedures for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requests to the schedule of values, work completed, and materials and equipment delivered at the site but not incorporated in the work.

### **Certificates**

During the course of the work, RPR shall verify that certificates 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 to review for forwarding to OWNER prior to final payment for the work.

### **Completion**

Before ENGINEER issues a Certificate of Substantial Completion, RPR shall submit to Contractor a list of observed items requiring completion or correction. RPR shall observe whether Contractor has 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.

RPR shall conduct a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected. RPR shall 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.

When the RPR observes, or has knowledge of, a violation of OSHA or other established safety regulations, RPR shall notify the CONTRACTOR of such violation. If, to the best of the ENGINEER's knowledge and belief, the violation is not promptly corrected, the RPR shall notify the OWNER. Notwithstanding the foregoing, the Contractor shall be responsible for compliance with all OSHA and safety rules and regulations.

### **Limitations of Authority by RPR**

- RPR shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items) unless authorized by ENGINEER.
- RPR shall not exceed limitations of ENGINEER’s authority as set forth in the Agreement or the Contract Documents.
- RPR shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor’s superintendent.
- RPR shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, procedures of construction, or health and safety procedures unless such advice or directions are specifically required by the Contract Documents.
- RPR shall not accept Shop Drawing or sample submittals from anyone other than Contractor.
- RPR shall not authorize OWNER to occupy the Project in whole or in part.
- RPR shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

### **TASK 1500 – Unspecified Additional Services Allowance**

During the Project, additional services not specified in this Amendment may be needed to support the completion of the work effort. Examples of additional services include additional construction administration and RPR services due to an extended construction duration. These services will be performed by ENGINEER as needed only after being authorized in writing by the OWNER. ENGINEER will prepare a scope and fee and submit to the OWNER for approval. An allowance of \$50,000 is included for work under this task.

### **3.0 ASSUMPTIONS**

The ENGINEER assumptions are the same as those identified in the Main agreement, and Amendment No. 1 and 2

### **4.0 OWNER’S RESPONSIBILITIES**

The responsibilities of OWNER are the same as those identified in the Main agreement, and Amendment No. 1 and 2



**5.0 SCHEDULE**

It is anticipated that the services related to Amendment No. 3 will add three (3) months of additional time to the construction duration described in Amendments No. 1 and 2. ENGINEER will prepare an updated detailed schedule within the first fifteen (15) calendar days after NTP. Should schedule shift or extend due to OWNER or Contractor delays, an amendment will be necessary.

**6.0 PAYMENT AND COMPENSATION**

Total compensation to the ENGINEER for the work described above shall be \$304,500, which is comprised of \$254,500 as a lump sum amount and \$50,000 as an additional services allowance. Invoices will be submitted monthly based on estimated project percent complete, with a final invoice submitted once all project deliverables are completed. Additional services, if applicable and approved by the OWNER, will be compensated at an agreed upon lump sum fee. The cost breakdown per task is presented in the table below.

<b>Task</b>	<b>Description</b>	<b>Lump Sum</b>
Task 500	Project Management and Meetings	\$8,000
Task 1000	Bidding and Award	\$5,000
Task 1100	Construction Contract Administration	\$64,500
Task 1400	Resident Project Representation	\$177,000
Task 1500	Additional Services	\$50,000
<b>TOTAL =</b>		<b>\$304,500</b>