CITY OF CORPUS CHRISTI
AMENDMENT NO. 1
CONTRACT FOR REPRESENTATIVE SERVICES

E16456 Construction Inspection Staff Augmentation (Andy Vigstol)

The City of Corpus Christi, a Texas home rule municipal corporation, P.O. Box 9277, Corpus Christi, Nueces County, Texas 78469-9277 (City) acting through its duly authorized City Manager or Designee (Director) and Lockwood, Andrews & Newnam, Inc., a Texas corporation, 500 N. Shoreline Boulevard, Suite 905, Corpus Christi, Nueces County, Texas 78401, (Consultant), hereby agree as follows:

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ARTICLE I – SCOPE OF SERVICES

1.1 The Consultant shall provide to Engineering Services its Scope of Services, to be incorporated herein and attached to this Agreement as **Exhibit A**. The Scope of Services shall include all associated services required for Consultant to provide such Services, pursuant to this Agreement, and any and all Services that would normally be required by law or common due diligence in accordance with the standard of care defined in Article XII of this Agreement.

1.2 Consultant shall comply with City standards, as specified in the Unified Development Code (UDC) or Code of Ordinances at the time of the execution of the contract, throughout the duration of the Project, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached as **Exhibit A**. A request made by either party to deviate from City standards after the contract is executed must be in writing.

1.3 Consultant shall provide labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Agreement. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant. Consultant must provide City with a list of all subconsultants that includes the services performed by subconsultant and the % of work performed by subconsultant. Changes in Consultant's team that provides services under this Agreement must be agreed to by the City in writing.

1.4 Consultant shall not begin work on any phase/task authorized under this Agreement until they are briefed on the scope of the Project and are notified in writing to proceed. If the scope of the Project changes, either Consultant or City may request a review of the changes with an appropriate adjustment in compensation.

1.5 Consultant shall conduct all services in a manner to avoid delaying the progress of the construction work.

1.6 Consultant will conduct on-site observations of contractor's work in progress, materials and equipment to assist City and design consultants in determining if the work is in general proceeding in accordance with construction documents. Consultant shall not supervise, direct or have control over contractor's work nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress or for any failure of a contractor to comply with laws and regulations applicable to such contractor's performing and furnishing of its work. The Consultant neither guarantees the performances of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the construction documents.

1.7 Consultant shall notify the contractor and City if a construction deficiency is noted during observations. Consultant will advise the City of Consultant's opinion regarding the deficiency and the appropriate action but only the City can initiate any stop work orders or other penalties relating to the noted deficiency. The Consultant shall note the deficiency and action taken in the daily report.

1.8 Consultant shall notify the City of any design conflicts requiring a change to the construction contract or construction documents and will assist the City with resolution of the conflict. Consultant will consider and evaluate contractor's suggestions for modification to the construction documents and report such suggestions to the City.

1.9 Consultant shall review applications for payment with contractor for compliance with the established procedure for their submission and forward with recommendations to City and design consultant, noting particularly the relationship of payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

1.10 Consultant will assist in the scheduling of construction testing and system start-ups either on behalf of the City or through the contractor as may be required in the construction documents. Consultant will witness on-site testing, review the results of the tests and notify the City of test results that do not meet the minimum requirements

of the construction documents. Consultant will observe, record and report to the City and design consultants appropriate details relative to the test procedures and system start-ups.

1.11 Consultant shall summarize construction observations reports in a log after each site visit in the format requested by the City. Reports shall include weather, site conditions, general observations, contractor's activities, data relative to questions of change orders, field orders, work change directives, field conditions or decisions made.

1.12 Consultant will attend meetings with the City, design consultants and contractor, such as pre-construction conferences, progress meetings, job conferences and other project related meetings as requested by the City.

1.13 Consultant will participate in site visits with the City, design consultants and contractor to determine substantial completion, and assist in determination of substantial completion and preparation of lists of items to be completed or corrected. Consultant will participate in a final site visit with the City, design consultants and contractor and assist in preparation of a final list of items to be completed and deficiencies to be remedied. Consultant will assist the City in determining whether all items on the final list have been completed or corrected and make recommendations to the City and design consultants concerning final acceptance.

1.14 Consultant shall not:

1.14.1 Authorize any deviation from the construction documents or substitution of materials or equipment (including "or-equal" items).

1.14.2 Undertake any of the responsibilities of contractor, subcontractors or suppliers.

1.14.3 Advise on, issue directives relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of contractor's work.

1.14.4 Advise on, issue directions regarding or assume control over security or safety practices, precautions, traffic controls, erosion controls or any programs in connection with the activities or operations of contractor.

ARTICLE II – QUALITY ASSURANCE

2.1 The Consultant agrees to perform quality assurance inspection services. The City reserves the right to retain a separate consultant to perform additional services for the City.

2.2 The Consultant will perform quality assurance inspection services during the Project to ensure the Work satisfies applicable industry quality standards and meet the requirements of the Project scope.

ARTICLE III – COMPENSATION

3.1 The Compensation for all services (Basic and Additional) included in this Agreement and in the Scope of Services for this Agreement shall not exceed **$130,400** for a total restated fee not to exceed **$178,400**.

3.2 The Consultant's fee will be on a time and materials (T&M) basis as detailed in **Exhibit A** and will be full and total compensation for all services and for all expenses incurred in performing these services.

3.3 The Director of Engineering Services may request the Consultant to undertake additional services or tasks provided that no increase in fee is required. Services or tasks requiring an increase of fee will be mutually agreed and evidenced in writing as an amendment to this contract. Consultant shall notify the City within three (3) days of notice if a task requested requires an additional fee.

3.4 Monthly invoices will be submitted in accordance with the Payment Request as shown in **Exhibit B**. The invoice shall include documentation that shows who worked on the Project, the number of hours that each individual worked and any reimbursable expenses associated with the work. City will make prompt monthly payments in response to Consultant's monthly invoices.

3.5 Consultant certifies that title to all services covered by a Payment Request shall pass to City no later than the time of payment. Consultant further certifies that, upon submittal of a Payment Request, all services for which Payment Requests have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONSULTANT.**

3.6 The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City. Final billing shall indicate "Final Bill – no additional compensation is due to Consultant."

3.7 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

3.7.1 delays in the performance of Consultant's work;

3.7.2 failure of Consultant to make payments to subconsultants or vendors for labor, materials or equipment;

3.7.3 damage to City; or

3.7.4 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

3.8 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within 30 days. City shall not be deemed in default by reason of withholding compensation as provided under this Agreement.

3.9 In the event of any dispute(s) between the Parties regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures as required by the terms of this Agreement, any such claim shall be waived.

3.10 Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final Payment Request.

3.11 All funding obligations of the City under this Agreement are subject to the appropriation of funds in its annual budget. The City may direct the Consultant to suspend work pending receipt and appropriation of funds.

ARTICLE IV – TIME AND PERIOD OF SERVICE

4.1 This Agreement shall be effective upon the signature of the City Manager or designee (Effective Date).

4.2 This service shall be for a period of 32 weeks beginning on the Effective Date. The Agreement may be renewed for up to one (1) one-year renewal options upon mutual agreement of the parties to be evidenced in writing

prior to the expiration date of the prior term. Any renewals shall be at the same terms and conditions, plus any approved changes.

4.3 The Consultant agrees to begin work on those authorized Services for this contract upon receipt of the Notice to Proceed from the Director of Engineering Services. Work will not begin on any phase or any Additional Services until requested in writing by the Consultant and written authorization is provided by the Director of Engineering Services.

4.4 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations under this Agreement in a prompt and continuous manner so as to not delay the Work for the Project, in accordance with the schedules approved by City. The Consultant and City are aware that many factors may affect the Consultant's ability to complete the services to be provided under this agreement. The Consultant must notify the City within three business days of becoming aware of a factor that may affect the Consultant's ability to complete the services hereunder.

4.5 City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the project.

4.6 This Agreement shall remain in force for a period which may reasonably be required for completion of the Project, including any extra work and any required extensions thereto, unless terminated as provided for in this Agreement.

ARTICLE V – INSURANCE REQUIREMENTS

5.1 Consultant must not commence work under this Agreement until all insurance required has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

5.2 Insurance Requirements are shown in **Exhibit C**.

ARTICLE VI – INDEMNIFICATION

Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents, employees or other entity, excluding the engineer or architect or that person's agent, employee or subconsultant, over which the City exercises control ("Indemnitee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, to the extent that the damage 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 Consultant or its agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this agreement. This indemnification does not apply to any liability resulting from the negligent acts or omissions of the City or its employees, to the extent of such negligence.

Consultant shall defend Indemnitee, with counsel satisfactory to the City Attorney, from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court cost. Consultant must advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

ARTICLE VII – TERMINATION OF AGREEMENT

7.1 By Consultant:

7.1.1 The City reserves the right to suspend this Agreement at the end of any phase for the convenience of the City by issuing a written and signed Notice of Suspension. The Consultant may terminate this Agreement for convenience in the event such suspension extends for a period beyond 120 calendar days by delivering a Notice of Termination to the City.

7.1.2 The Consultant must follow the Termination Procedure outlined in this Agreement.

7.2 By City:

7.2.1 The City may terminate this agreement for convenience upon seven days written notice to the Consultant at the address of record.

7.2.2 The City may terminate this agreement for cause upon ten days written notice to the Consultant. If Consultant begins, within three days of receipt of such notice, to correct its failure and proceeds to diligently cure such failure within the ten days, the agreement will not terminate. If the Consultant again fails to perform under this agreement, the City may terminate the agreement for cause upon seven days written notice to the Consultant with no additional cure period. If the City terminates for cause, the City may reject any and all proposals submitted by Consultant for up to two years.

7.3 Termination Procedure

7.3.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant takes action to cure a failure to perform under the cure period, Consultant shall immediately begin the phase-out and discontinuance of all services in connection with the performance of this Agreement. Within 30 calendar days after receipt of the Notice of Termination, unless Consultant has successfully cured a failure to perform, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

7.3.2 Consultant shall submit all completed and/or partially completed work under this Agreement.

7.3.3 Upon receipt of documents described in the Termination Procedure and absent any reason why City may be compelled to withhold fees, Consultant will be compensated for its services based upon a Time & Materials calculation. There will be no compensation for anticipated profits on services not completed.

7.3.4 Consultant acknowledges that City is a public entity and has a duty to document the expenditure of public funds. The failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement.

ARTICLE VIII – RIGHT OF REVIEW AND AUDIT

8.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under this Agreement, then such retention period shall extend until final resolution of the dispute.

8.2 Consultant's records include any and all information, materials and data of every kind and character generated as a result of and relevant to the Work under this Agreement (Consultant's Records). Examples include billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, and any and all other agreements, sources of information and matters that may, in City's and Consultant's reasonable judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

8.3 City agrees that it shall exercise the right to audit, examine or inspect Consultant's Records only during Consultant's regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and Consultant's current employees, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

8.4 Consultant shall include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE IX – OWNER REMEDIES

9.1 The City and Consultant agree that in the event the City suffers actual damages, the City may elect to pursue its actual damages and any other remedy allowed by law. This includes but is not limited to:

9.1.1 Failure of the Consultant to make adequate progress and endanger timely and successful completion of the Project, which includes failure of subconsultants to meet contractual obligations;

9.1.2 Losses that are incurred because of errors and/or omissions in documents prepared by the Consultant to the extent that the financial losses are greater than the City would have originally paid had there not been errors and/or omissions in the documents.

9.2 The City may withhold or nullify the whole or part of any payment as detailed in Article III.

ARTICLE X – CONSULTANT REMEDIES

10.1 If Consultant is delayed due to uncontrollable circumstances, such as strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's and City's reasonable control, an extension of the Project schedule in an amount equal to the time lost due to such delay shall be Consultant's sole and exclusive remedy. The revised schedule should be approved in writing with a documented reason for granting the extension.

10.2 The City agrees that the Consultant is not responsible for damages arising from any cause beyond Consultant's reasonable control.

10.3 If Consultant requests a remedy for a condition not specified above, Consultant must file a Claim as provided in this Agreement.

ARTICLE XI – CLAIMS AND DISPUTE RESOLUTION

11.1 Filing of Claims

11.1.1 Claims arising from the circumstances identified in this Agreement or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within twenty-one (21) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim.

11.1.2 Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by a person authorized to bind the Consultant by his/her signature, verifying the truth and accuracy of the Claim.

11.1.3 The responsibility to substantiate a claim rests with the party making the Claim.

11.1.4 Within thirty (30) calendar days of receipt of notice and supporting documentation, City will meet to discuss the request, after which an offer of settlement or a notification of no settlement offer will be sent to Consultant. If Consultant is not satisfied with the proposal presented, Consultant will have thirty (30) calendar days in which to (i) submit additional supporting data requested by the City, (ii) modify the initial request for remedy or (iii) request Mediation.

11.1.5 Pending final resolution of a claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of the Agreement, and City shall continue to make payments in accordance with this Agreement.

11.2 Mediation

11.2.1 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11.2.2 Before invoking mediation, the Parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to the use of mediation. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation process contained herein.

11.2.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the Party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

11.2.3.2 Request for mediation shall be in writing, and shall request that the mediation commence no less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

11.2.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days of the request for mediation, all conditions precedent in this Article shall be deemed to have occurred.

11.2.3.4 The parties shall share the mediator's fee. Venue for mediation shall be Nueces County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall

waive any immunity or defense. No provision of this Agreement is a consent to suit.

11.3 In calculating the amount of any Claim or any measure of damages for breach of contract, the following standards shall apply both to claims by Consultant and to claims by City:

11.3.1 In no event shall either Party be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever;

11.3.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other Party is claimed to be responsible.

11.4 In case of litigation between the parties, Consultant and City agree that neither party shall be responsible for payment of attorney's fees pursuant to any law or other provision for payment of attorneys' fees. Both Parties expressly waive any claim to attorney's fees should litigation result from any dispute between the parties to this Agreement. Both Parties expressly waive their right to a trial by jury.

11.5 **No Waiver of Governmental Immunity. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

ARTICLE XII – MISCELLANEOUS PROVISIONS

12.1 Assignability. Neither party will assign, transfer or delegate any of its obligations or duties under this Agreement to any other person and/or party without the prior written consent of the other party, except for routine duties delegated to personnel of the Consultant staff. This includes subcontracts entered into for services under this Agreement. If the Consultant is a partnership or joint venture, then in the event of the termination of the partnership or joint venture, this contract will inure to the individual benefit of such partner or partners as the City may designate. No part of the Consultant fee may be assigned in advance of receipt by the Consultant without written consent of the City.

The City will not pay the fees of expert or technical assistance and consultants unless such employment, including the rate of compensation, has been approved in writing by the City.

12.2 Ownership of Documents. Consultant agrees that upon payment, City shall exclusively own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement, including contract documents (plans and specifications), drawings and submittal data. Consultant may make a copy for its files. Any reuse by the City, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

12.3 Standard of Care. Services provided by Consultant under this Agreement shall be performed with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances; and performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent inspector.

12.4 Independent Contractor. The relationship between the City and Consultant under this Agreement shall be that of independent contractor. City may explain to Consultant the City's goals and objectives in regard to the services to be performed by Consultant, but the City shall not direct Consultant on how or in what manner these goals and objectives are to be met.

12.5 Entire Agreement. This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the City and Consultant.

12.6 Disclosure of Interest. Consultant agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form, attached as **Exhibit D**.

12.7 Certificate of Interested Parties. For contracts greater than $50,000, Consultant agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement, and attach the Form 1295 as **Exhibit E**. Form 1295 requires disclosure of "interested parties" with respect to entities that enter into contracts with cities that exceed $50,000. These interested parties include:

(1) persons with a "controlling interest" in the entity, which includes:
   a. an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent;
   b. membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
   c. service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers; or
(2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser or attorney for the business entity.

Form 1295 must be electronically filed with the Texas Ethics Commission at **https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm**. The form must then be printed, signed, notarized and filed with the City. For more information, please review the Texas Ethics Commission Rules at https://www.ethics.state.tx.us/legal/ch46.html.

12.8 Conflict of Interest. Consultant agrees, in compliance with Chapter 176 of the Texas Local Government Code, to complete and file Form CIQ with the City Secretary's Office. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at http://www.cctexas.com/government/city-secretary/conflict-disclosure/index.

12.9 Controlling Law. This Agreement is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas. Cases must be filed and tried in Nueces County and cannot be removed from Nueces County.

12.10 Severability. If, for any reason, any one or more Articles and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles and/or paragraphs of this Agreement but shall be confined in its effect to the specific Article, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

12.11 Conflict Resolution Between Documents. Consultant hereby agrees and acknowledges if anything contained in the Consultant-prepared **Exhibit A**, Consultant's Scope of Services, or contained in any other document prepared by Consultant and included herein, is in conflict with this Agreement, this Agreement shall take precedence and control to resolve said conflict.

CITY OF CORPUS CHRISTI

Jeff H. Edmonds, P. E., Date
Director of Engineering Services

RECOMMENDED

Operating Department Date

APPROVED AS TO LEGAL FORM

Assistant City Attorney Date

APPROVED

Office of Management and Budget Date

ATTEST

City Secretary Date

LOCKWOOD, ANDREWS & NEWNAM, INC.

Scott M. Harris, P.E., 3/2/17 Date
Regional Manager
500 N. Shoreline Boulevard, Suite 905
Corpus Christi, TX 78401
(361) 882-2257 Office
smharris@lan-inc.com

Construction Inspection Staff Augmentation (Andy Vigstol) [RFP No. 2016-05]
Project Number E16456
Amendment No. 1

Fund Name	Accounting Unit	Account	Activity	Account Category	Amount
Street CIP BOND 2014	3551-051	550910	E13092-01-3551-EXP	50910	$130,400.00
Total					$130,400.00

E13092 Ayers Street from Ocean Drive to Alameda Street BOND 2014

Lockwood, Andrews & Newnam, Inc.
A LEO A DALY COMPANY

February 2, 2017

Mr. Jeff H. Edmonds, P.E.
Director of Engineering Services
City of Corpus Christi
1201 Leopard Street
Corpus Christi, Texas 78401

Reference: Amended Proposal for Construction Inspection Staff Augmentation (Andy Vigstol) (**RFP 2016-05**)

Dear Mr. Edmonds:

At your request, Lockwood Andrews & Newnam, Inc. (LAN) is pleased to provide you with this amended proposal for **Andy Vigstol**, a full-time employee of LAN, to augment existing City of Corpus Christi staff to provide full-time construction inspection services at forty hours per week for the City's Construction Services Department. The proposed scope of services is in Attachment A. The original January 25, 2017, proposal is Attachment B.

Andy will continue to perform these services at a straight-time rate of $100.00/hour for an additional 32 weeks and 3 days; for a total of 44 weeks and 3 days, or until December 29th, 2017. The estimated total fee for this proposed amendment will be $130,400.00, for a proposed total combined fee of $178,400.00 as summarized in the table below. The initial small A/E proposal for Mr. Vigstol is for services through May 15, 2017. This proposed amendment would extend his service to the end of the year, December 29, 2017.

Description	Start	End	Weeks	Days	Hours	Rate / HR	Amount
Initial Small A/E Proposal Amount	2/20/17	5/15/17	12	0	480	$ 100.00	$ 48,000.00
Proposed Amendment	5/16/17	12/29/17	32	3	1,304	$ 100.00	$ 130,400.00
Proposed Total Combined Fee			**44**	**3**	**1,784**		**$ 178,400.00**

Should you have any questions or require additional information, please contact me directly at 361-876-6395.

Sincerely,

JOHN MONTALVO
FOR:
Scott M. Harris, P.E.
Regional Manager

Copy: Chris Hale, P.E., John Montalvo

Attachments:
A – Scope of Work

ATTACHMENT A
SCOPE OF WORK
(EXTRUDED FROM RFP 2016-05)

Contracted Construction Inspectors (Contract Inspectors) will work directly under the supervision of City's Construction Inspection Division in providing Quality Assurance services and to assist in expediting the contractor's progress by minimizing conflicts and conflict resolution, identifying change order potential, detailing deficient work and repairs and other support related services. Contract Inspectors should be available to start immediately upon award of contract. Contract Inspectors will be required to keep detailed daily inspection reports on provided City forms. Requirements will include producing and organizing the following documentation:

- Construction Contractor Progress including installed and completed work, construction crew and equipment available on site, and contract specific conversations held on site concerning construction issues.
- Daily and Weekly construction photos including proper labeling/filing of same;
- Testing lab results with immediate alerts to City Staff of failures.
- Rain days, lost time due to heavy rains, completion of monthly time statements.
- Project coordination meetings (conducted by Inspector).
- Any site related activity which may impact future / past progress or activity which may significantly impact the construction quality.

Some of the required tasks may include the following:

- Review of all contract documents, Specifications, Plans, Drawings, Addendums and other project-related reports.
- Schedule and coordinate the location and frequency of required tests per the specifications with the City's approved materials testing lab.
- Work closely with City Department personnel in coordination of construction related activities.

- Attend project and coordination meetings.
- Review construction contractor Payment Requests, including coordination and acceptance of quantities.
- Review and coordinate all approved change orders, field orders and changes.
- Communicate with local businesses and residents including meeting with and documenting any citizen or business related concerns or requests.

The Contract Inspector will be responsible for providing any and all resources necessary to accomplish this Scope of Work including personal protective equipment (PPE), computers, cell phones and local transportation. All costs associated with accomplishing this should be imbedded within the proposed rate.

ATTACHMENT B
Proposal for Construction Inspection / Construction Observation
(January 25, 2017)

Lockwood, Andrews & Newnam, Inc.
A LEO A DALY COMPANY

January 25, 2017

Mr. Jeff H. Edmonds, P.E.
Director of Engineering Services
City of Corpus Christi
1201 Leopard Street
Corpus Christi, Texas 78401

Reference: RFP 2016-05 Construction inspection Staff Augmentation Services

Dear Mr. Edmonds:

At your request, Lockwood Andrews & Newnam, Inc. (LAN) is providing you with this proposal for **Andy Vigstol**, a full-time employee of LAN, to augment existing City of Corpus Christi staff to provide construction inspection services for the City's Construction Services Department. We understand that this is a full-time position that will require Andy to work forty hours per week for the City until December 31st, 2017. The scope of services with which he will perform are outlined in RFP 2016-05 and extruded in Attachment A, as our acknowledgement of understanding.

Andy will perform these services in accordance with the rate sheet provided to you in our response to the RFP; his rate is $100.00/hour. Andy is immediately available to work for 12 weeks for a total Small A/E contract amount of $48,000.00. LAN assumes that this contract will be amended to allow for his employment until the end of the calendar year (December 31, 2017) at the same rate above. Mr. Vigstol is available to begin immediately upon execution of the Small A/E contract.

LAN is here to support the City of Corpus Christi deliver the hundreds of millions of dollars of projects to the public. We have an available, highly qualified, professional work force at your disposal supported by the best in the business.

Should you have any questions or require additional information, please contact me directly at 361-876-6395.

Sincerely,

Scott M. Harris, P.E.
Regional Manager

Copy: Chris Hale, P.E.

ATTACHMENT B (Continued)
Proposal for Construction Inspection / Construction Observation
(January 25, 2017)

ATTACHMENT A
SCOPE OF WORK
(EXTRUDED FROM RFP 2016-05)

Contracted Construction Inspectors (Contract Inspectors) will work directly under the supervision of City's Construction Inspection Division in providing Quality Assurance services and to assist in expediting the contractor's progress by minimizing conflicts and conflict resolution, identifying change order potential, detailing deficient work and repairs and other support related services. Contract Inspectors should be available to start immediately upon award of contract. Contract Inspectors will be required to keep detailed daily inspection reports on provided City forms. Requirements will include producing and organizing the following documentation:

- Construction Contractor Progress including installed and completed work, construction crew and equipment available on site, and contract specific conversations held on site concerning construction issues.
- Daily and Weekly construction photos including proper labeling/filing of same;
- Testing lab results with immediate alerts to City Staff of failures.
- Rain days, lost time due to heavy rains, completion of monthly time statements.
- Project coordination meetings (conducted by Inspector).
- Any site related activity which may impact future / past progress or activity which may significantly impact the construction quality.

Some of the required tasks may include the following:

- Review of all contract documents, Specifications, Plans, Drawings, Addendums and other project-related reports.
- Schedule and coordinate the location and frequency of required tests per the specifications with the City's approved materials testing lab.
- Work closely with City Department personnel in coordination of construction related activities.

- Attend project and coordination meetings.
- Review construction contractor Payment Requests, including coordination and acceptance of quantities.
- Review and coordinate all approved change orders, field orders and changes.
- Communicate with local businesses and residents including meeting with and documenting any citizen or business related concerns or requests.

The Contract Inspector will be responsible for providing any and all resources necessary to accomplish this Scope of Work including personal protective equipment (PPE), computers, cell phones and local transportation. All costs associated with accomplishing this should be imbedded within the proposed rate.

EXHIBIT B

PAYMENT REQUEST

COMPLETE PROJECT NAME
Project No. XXXX
Invoice No. 12345
Invoice Date 01/01/2017

Basic Services:	**Contract**	**Amd No. 1**	**Amd No. 2**	**Total Contract**	**Current Invoice**	**Previous Invoice**	**Total Invoice**	**Remaining Balance**	**Percent Complete**
Preliminary Phase	$1,000.00	$0.00	$0.00	**$1,000.00**	$0.00	$1,000.00	$1,000.00	$0.00	100.0%
Design Phase	$2,000.00	$1,000.00	$0.00	**$3,000.00**	$1,000.00	$500.00	$1,500.00	$1,500.00	50.0%
Bid Phase	$500.00	$0.00	$250.00	**$750.00**	$0.00	$0.00	$0.00	$750.00	0.0%
Construction Phase	$2,500.00	$0.00	$1,000.00	**$3,500.00**	$0.00	$0.00	$0.00	$3,500.00	0.0%
Subtotal Basic Services	$6,000.00	$1,000.00	$1,250.00	**$8,250.00**	$1,000.00	$1,500.00	$2,500.00	$5,750.00	30.3%
Additional Services:									
Permitting	$2,000.00	$0.00	$0.00	**$2,000.00**	$500.00	$0.00	$500.00	$1,500.00	25.0%
Warranty Phase	$0.00	$1,120.00	$0.00	**$1,120.00**	$0.00	$0.00	$0.00	$1,120.00	0.0%
Inspection	$0.00	$0.00	$1,627.00	**$1,627.00**	$0.00	$0.00	$0.00	$1,627.00	0.0%
Platting Survey	TBD	TBD	TBD	**TBD**	TBD	TBD	TBD	TBD	TBD
O & M Manuals	TBD	TBD	TBD	**TBD**	TBD	TBD	TBD	TBD	TBD
SCADA	TBD	TBD	TBD	**TBD**	TBD	TBD	TBD	TBD	TBD
Subtotal Additional Services	$2,000.00	$1,120.00	$1,627.00	**$4,747.00**	$500.00	$0.00	$500.00	$4,247.00	10.5%
Summary of Fees:									
Basic Services Fees	$6,000.00	$1,000.00	$1,250.00	**$8,250.00**	$1,000.00	$1,500.00	$2,500.00	$5,750.00	30.3%
Additional Services Fees	$2,000.00	$1,120.00	$1,627.00	**$4,747.00**	$500.00	$0.00	$500.00	$4,247.00	10.5%
Total of Fees	$8,000.00	$2,120.00	$2,877.00	**$12,997.00**	$1,500.00	$1,500.00	$3,000.00	$9,997.00	23.1%

Notes:
If needed, update this sample form based on the contract requirements.
If applicable, refer to the contract for information on what to include with time and materials (T&M).

EXHIBIT C

Insurance Requirements

Staff Augmentation Contracts

1.1 Consultant must not commence work under this agreement until all required insurance has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

1.2 Consultant must furnish to the Director of Engineering Services with the signed agreement a copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	**MINIMUM INSURANCE COVERAGE**
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	**Bodily Injury and Property Damage** Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	$1,000,000 Per Occurrence $2,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	$500,000 Combined Single Limit

WORKERS' COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employer's Liability	Statutory $500,000 /$500,000 /$500,000

1.3 In the event of accidents of any kind related to this agreement, Consultant must furnish the City with copies of all reports of any accidents within 10 days of the accident.

1.4 Applicable for paid employees, Consultant must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Consultant will be promptly met. An All States Endorsement shall be required if Consultant is not domiciled in the State of Texas.

1.5 Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII. **Consultant is required to provide City with renewal Certificates.**

1.6 Consultant shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Engineering Services
P.O. Box 9277
Corpus Christi, TX 78469-9277

1.7 **Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

1.7.1 List the City and its officers, officials, employees and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;

1.7.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;

1.7.3 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and

1.7.4 Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

1.8 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

1.9 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

1.10 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractor's performance of the work covered under this agreement.

1.11 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

1.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

City of Corpus Christi

SUPPLIER NUMBER
TO BE ASSIGNED BY CITY
PURCHASING DIVISION

CITY OF CORPUS CHRISTI
DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certifications and definitions.

COMPANY NAME: **Lockwood, Andrews & Newnam, Inc.**

P. O. BOX:

STREET ADDRESS: **500 N. Shoreline, Suite 905** **CITY:** **Corpus Christi** **ZIP:** **78401-034**

FIRM IS: 1. Corporation ☒ 2. Partnership ☐ 3. Sole Owner ☐ 4. Association ☐ 5. Other ☐

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
NA	

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
NA	

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
NA	

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
NA	

FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: **Steve Gilbreath** **Title:** **Vice President**

(Type or Print)

Signature of Certifying Person: _____ **Date:** 2/17/17

DEFINITIONS

a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.

b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.

c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.

d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.

e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.

f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."

g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2017-168301

Date Filed:
02/17/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Lockwood, Andrews & Newnam, Inc.
Houston, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Corpus Christi

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

E16456
Amendment 1 - Engineering Services

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Daly, Leo	Washington, DC United States	X	
Daly, Grega	Washington, DC United States	X	
Petersen, Dennis	Houston, TX United States	X	
Cohen, Arnold	Austin, TX United States	X	
Vajdani, Sima	Los Angeles, CA United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

GIOVANNA RANGEL NOTARY PUBLIC STATE OF TEXAS ID 130179180 EXP 04-03-2019

AFFIX NOTARY STAMP/SEAL ABOVE

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Stephen Gilbreath, this the 17 day of February, 20 17, to certify which, witness my hand and seal of office.

Giovanna Rangel	Giovanna Rangel	Notary Public
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath