



## **REQUEST FOR PROPOSALS (RFP) NO. 2023-137**

**CLOSING DATE AND TIME: DECEMBER 28, 2023 - 2:00 P.M.**

### **CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES FOR THE CONSTRUCTION OF NEW FIRE STATION NO. 8**

#### **PROPOSALS SHALL BE SUBMITTED ON THIS FORM**

The City of Mesquite, Texas invites sealed proposals from all qualified vendors desiring to furnish the City with Construction Manager at Risk (CMAR) Services for the construction of new Fire Station No. 8, complying with the following specifications as listed herein.

A pre-submittal conference will be held at 10:00 a.m. on Tuesday, December 19, 2023, located on second floor at 757 N. Galloway Avenue, Mesquite TX 75149. Although it is not required, prospective Proposers are encouraged to attend this conference.

A sealed copy of the bid proposal may be submitted by courier or hand delivered to Ryan Williams, Manager of Purchasing, City of Mesquite, 757 N. Galloway, Mesquite, Texas 75149. Proposals may also be mailed to Ryan Williams, Manager of Purchasing, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185-0137. Mark envelope in lower left corner "RFP No. 2023-137; Construction Manager At-Risk (CMAR) Services for the Construction of New Fire Station No. 8," so that the proposals will not be opened until the appointed hour. Proposals submitted must be received before proposal closing on Thursday, December 28, 2023, at 2:00 p.m. Faxed bid proposals will not be accepted.

#### ***GENERAL CLAUSES AND CONDITIONS***

1. If you have questions regarding the preparation of your proposal, you may contact [purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com).
2. Vendors who do not respond to this particular proposal, but who want to remain on our mailing list for future opportunities shall indicate "NO PROPOSAL" on the face of this page by putting the date and signed by the authorized representative of your company and return this page to the Purchasing office. Your assistance in this matter is greatly appreciated.
3. Protection of Resident Workers: The City of Mesquite actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
4. Laws and Ordinances: The Contractor shall at all times observe and comply with all Federal, State, and local laws,

ordinances, and regulations which in any manner affect the Contract or the work and shall indemnify and save harmless the City against any claim arising from the violation of any such laws, ordinances, and regulations whether by the Contractor or his employees.

5. Proposals must be received prior to the closing date and time to be considered. Proposals must be submitted in sufficient time to be received and time-stamped at the above location on or before the published date and time shown on the RFP. The City of Mesquite will not be responsible for mail delivered from the post office. Proposals received after the published time and date cannot be considered and will be returned unopened. **Proposer shall submit one original, one copy, and one flash drive containing an electronic copy of the complete proposal and all attachments.**
6. Proposals will be received and publicly acknowledged at the location, date and time stated above. Only the name of the proposers responding to this request for proposal shall be released at the proposal opening. Other information submitted by the proposer shall not be released by the City during the proposal evaluation process or prior to contract award. At no time will confidential information, as noted by the proposer, be released.
7. Proposer shall attach official documentation from the State of Texas or other qualified certification agency of M/WBE status of your company with bid/proposal. This data is for informational purposes only and will not affect the bid proposal award.
8. A completed W-9 form will be required and submitted with bid.
9. In submitting an offer, respondent certifies that they have not participated in, nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
10. The attached Non-Exclusion Affidavit for General Contractors must be signed, notarized, and submitted with bid proposal.
11. A representative of the proposing entity who is authorized to enter into contract on behalf of the proposing entity must manually sign proposals in ink. The person signing the proposal must indicate his/her title along with signature. Proposals received without proper signature will not be considered.
12. Any ambiguity in the bid proposal as a result of omission, error, lack of clarity or non-compliance by the proposer with specifications, instructions and all conditions shall be construed in favor of the City.
13. The City of Mesquite reserves the right to reject any and all proposals, waive formalities and to make award of bid proposal as may be deemed to the best advantage of the City. No proposal may be withdrawn within forty-five (45) days after date of opening.
14. This Contract may be terminated at any time with thirty-(30) day's written notice by either the City of Mesquite or successful proposer.
15. The City is not liable for any cost incurred by Proposers in replying to this RFP. This includes costs to determine the nature of the proposal, submitting, negotiating, presentations or any other costs a vendor would incur in responding to the RFP.
16. Proposers shall complete all information requested and blanks provided shall be filled in on the provided forms. Failure to completely describe the merchandise being proposed may result in rejection of your bid proposal.
17. The City is exempt from all sales and excise taxes.
18. The City of Mesquite reserves the right to evaluate variations from these specifications. If exceptions are made,

proposer shall state wherein the merchandise fails to meet these specifications. Failure to completely describe the merchandise being proposed may result in rejection of your proposal.

19. It shall be understood all proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charges and proposal or referencing information submitted in response to this RFP shall become the property of the City and will not be returned. All restrictions on the use of data contained within a proposal and all confidential information must be clearly stated in the RFP. Proprietary information submitted in a proposal, or in response to the RFP, will be handled in accordance with the Texas Open Records Law and other applicable state statutes.
20. It is the vendor's responsibility to check for any addendums that might have been issued before the proposal closing date and time.
21. Cooperative Purchasing: As permitted under the Texas Local Government Code, Chapter 791025, other *government entities may wish to also participate under the same terms and conditions contained in this contract (piggyback)*. Each entity wishing to piggyback must have prior authorization from the City of Mesquite and vendor. If such participation is authorized, all purchase orders will be issued directly from and shipped directly to the entity requiring supplies/services. The City of Mesquite shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by these entities. Each entity reserves the right to determine their participation in this contract.

Successful proposer agrees to extend prices to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Mesquite \_\_\_\_\_ Yes \_\_\_\_\_ No.

22. The proposal evaluation process will occur after the closing date. The City's evaluation and clarification process will commence. An evaluation team will review the proposals. Financial terms will not be the sole determining factor in this award. Other criteria described in this RFP will be considered, as well as any other factors the evaluation team determines may affect the suitability of the proposal for the City's requirements. A Proposer's submission of a proposal constitutes their acceptance of the evaluation technique.
23. The insurance requirements are included in the proposal document. Proposers agree to provide and to maintain the required types of insurance for the term of the contract. An original certificate of insurance will be required within 10 business days by the apparent low proposer once notification has been received.
24. ALL BIDDERS must submit with bid, either a Bid Bond on the form provided herein, a Cashier's Check or Certified Check in the amount of five percent (5%) of the total bid.
25. The contract is included for proposer's information so that proposers may be familiar with its contents and requirement. **Proposer shall not fill in or execute these forms at time of proposal submittal. Upon award of the proposal, the awarded vendor will be required to execute the contract.**

## **SPECIAL PROVISIONS**

1. The successful proposer's rights and duties awarded by the contract may not be assigned to another without written consent of the City signed by the City's authorized agent. Such consent shall not relieve the assigned of liability in the event of default by the assignee.
2. Any deviations from specifications and alternate proposals must be clearly shown with complete information provided by the proposer. They may or may not be considered by the City.
3. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing and shall not be effective unless signed by an authorized representative of the City.
4. The City shall have the right to modify this order subject to an adjustment in the price in accordance with the applicable provisions of the purchase order, if any, or pursuant to mutual agreements. No agreement or understanding to modify this order shall be binding on the City unless it is in writing and signed by an authorized representative of the City.
5. The City reserves the right to require additional technical and pricing information and negotiate all elements, which comprise the Vendor's proposal to ensure that the best possible consideration be afforded to all concerned. The City reserves the right to accept all or part of any proposal, to reject any or all proposals and to re-solicit for proposals.
6. **All questions must be submitted via email at [purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com) by 4:00 p.m. on Thursday, December 21, 2023, prior to proposal closing date.**
7. Proposers shall submit five current client references and five former client references.
8. Proposers shall fill out the following required documents, as noted in the bid proposal. If the following forms are not included, the bid proposal may be considered non-responsive.

### **Check List:**

- Conflict of Interest Questionnaire
- Non-Exclusion Affidavit for General Contractors
- Prohibition on Contracts with Companies Boycotting Israel
- References
- Secretary of State Filing Certificate
- W-9
- Bid Bond, Cashier's Check or Certified Check
- Offeror's Response Letter
- Offeror's Questionnaire
- Proposal Form

## CONTRACTING WITH THE CITY OF MESQUITE

Updated: January 8, 2016

### Conflict of Interest Questionnaire And Disclosure of Interested Parties (Form 1295)

YOU WILL BE REQUIRED TO COMPLY WITH THE FOLLOWING:

Chapter 176 of the Texas Local Government Code is an ethics law that was initially enacted by the Texas Legislature with HB 914 in 2005 that requires disclosure of employment and business relationships local government officers may have with contractors, consultants and vendors who conduct business with local government entities. The law applies to any written contract for the sale or purchase of real property, goods, or services. Further information regarding Texas Conflict of Interest laws and the ***Conflict-of-Interest Questionnaire*** (FORM CIQ) can be found at the Texas Ethics Commission web site at the following web address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

PLEASE COMPLETE THE ATTACHED FORM CIQ AND SUBMIT WITH YOUR RESPONSE.

Section 2252.908 of the Texas Government Code was enacted in 2015, by the Texas Legislature pursuant to HB 1295, which provides that a governmental entity may not enter into certain contracts with a business entity on or after January 1, 2016, unless the business entity submits a disclosure of interested parties (FORM 1295) to the governmental entity at the time the business entity submits the signed contract to the governmental entity. Further information regarding the disclosure of interested parties' law and FORM 1295 can be found at the Texas Ethics Commission web site at the following web address:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

PLEASE DO NOT COMPLETE FORM 1295 UNTIL YOU HAVE BEEN NOTIFIED OF CONTRACT AWARD AND REQUESTED TO ELECTRONICALLY FILE FORM 1295 WITH THE TEXAS ETHICS COMMISSION.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

**FORM CIQ**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2**  **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
 Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
 Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
 Date

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

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(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

## **Standards of Conduct**

The City of Mesquite conducts business with the public, business partners, vendors, and contractors under a set of rules to ensure that all City officials and employees discharge their duties in a manner designed to promote public trust and confidence in our city. This code of ethics, titled Standards of Conduct, is taken from the Mesquite City Code, Chapter 2, Art. IV, Sec 2-123.

The City wants you to be aware of the rules that its employees are required to follow while performing their services to you. A violation of state or federal statutes may occur if these rules are broken. It is hoped that by outlining these rules for you, your experience in dealing with the City of Mesquite will be both rewarding and satisfactory.

### **Acceptance of Gifts or Gratuities**

Accepting gifts or gratuities by employees in consideration for the performance of their duties, or as an appreciation for their performance, is strictly prohibited.

- Please do not offer employees any gift, loans, or any other thing of value.
- Employees may not receive any fee or compensation for their services from any source other than the City, so please do not offer.
- Please do not offer to buy meals for employees.
- Employees may accept coffee, tea, soft drinks, snacks, etc. when attending meetings in your office.
- Letters to supervisors for exceptional service by employees are always welcome.

### **Conflicts of Interest**

Employees are prohibited from engaging in any outside activities that conflict with, or have the appearance of conflicting with, the duties assigned to them in the employment of the City.

- Please do not ask employees for any special favor or consideration that is not available to every other citizen.
- Please do not ask an employee to disclose any information that is not available to every other citizen through normal public information channels.
- Please do not offer to compensate the employee by offering to hire, or do business with any business entity of the employee or family member
- Do not ask employees to represent you or your company or make any recommendations on your behalf other than those that are a part of their official duties with the City.
- Please do not ask employees to endorse the products or services of your company.
- Please do not ask employees to hand out or post advertising materials.

### **Solicitation by City Employees**

Employees may not solicit gifts, loans, or any other items of value from people doing City business that will be used by them personally.

- If you are asked to pay a fee for services that you believe is improper or illegal, please contact the City's ethic's officer at **972-329-8723**. (payments should only be made to designated cashiers or clerks).
- Employees are prohibited from taking retaliatory action against you for failing to comply with any request unless the request is within the scope of the employee's official duties for the City.



## **Use of City Equipment, Facilities and Resources**

Use of City equipment, facilities and resources is authorized only for City purposes and for those activities permitted by City ordinance and policy.

- Please do not ask employees to use City equipment to run errands or perform tasks for your benefit.
- Employees may not perform tasks, nor conduct any business not related to their official duties while on City time.

## **Your Rights and Expectations**

When dealing with employees of the City of Mesquite you have the right to honest, fair, and impartial treatment. You may expect prompt, courteous, and professional service from our employees who are expected to understand and practice good customer service skills. Employees are tasked to uphold the public trust through the ethical performance of their duties. We understand that the enforcement of regulatory guidelines and codes may sometimes be a cause for concern; however, you may rest assured that we are responsible to all of the citizens of Mesquite and our goal is to serve them to the best of our ability.

**Should you have any concerns or questions concerning this information or the conduct of any of our employees please contact the City's ethics officer at 972-329-8723.** All calls to the City's ethics officer are confidential and your name (or any other identifying information) will not be disclosed.

Cliff Keheley  
City Manager

**INSURANCE VERIFICATION PROGRAM  
LETTER OF AUTHORITY**

TO: All Awarded Vendors

RE: Insurance Verification

Dear Vendor:

The City of Mesquite has provided Insurance Certificate Administrators (ICA) authority to monitor certificates of insurance, endorsements and other policy information from our vendors and contractors. ICA will request, receive, evaluate, and order corrections from such companies.

ICA will provide the City of Mesquite with verification that any insurance document your agent or insurer certifies conforms to the contract requirements.

It is necessary that you have your agent or insurer promptly cooperate with ICA by having them provide the information ICA requests.

All correspondence regarding certificates of insurance and insurance policy information for the City of Mesquite should be sent to the following address. There is no need to provide copies to the City of Mesquite.

***City of Mesquite***  
c/o ICA  
input@icaprogram.com  
P.O. Box 2566  
Fort Worth, TX 76113-2566  
Phone: 817-332-5313

Please forward the enclosed instructions to your agent/broker. Thank you for your cooperation.

## INSURANCE

A. AMOUNTS OF INSURANCE

Contractor agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract.

<u>Type</u>	<u>Amount</u>
1. <u>Worker's Compensation</u> and <u>Employer's Liability</u>	<u>Statutory Limits</u> \$100,000 per occurrence
2. <u>Commercial (Public Liability)</u> <u>including but not limited to:</u>	<u>Bodily Injury:</u> \$500,000 per person \$1,000,000 per occurrence and
A. Premises/Operations	
B. Independent Contractors	
C. Personal Injury	<u>Property Damage:</u>
D. Products/Complete Operations	\$500,000 per occurrence
E. Contractual Liability (insuring above indemnity provisions)	with <u>general aggregate</u> of \$1,000,000
3. <u>Business (Commercial)</u> <u>Automobile Policy:</u>	Combined Single Limit/ \$500,000

The preceding amounts notwithstanding, the City reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the address provided herein. The Contractor may pass through to the City all costs for obtaining the increase in the insurance coverage.

B. OTHER INSURANCE REQUIREMENTS

The Contractor understands that it is its sole responsibility to provide the required Certificate and that failure to comply within 10 business days after notice of award and according to the requirements of this article shall be a cause for termination of this Contract.

For any pesticide spraying performed, the City of Mesquite will require the successful bidder to carry Pollution Liability Insurance and Environmental Impairment Liability Insurance.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City, as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third-party liability policy.

The Contractor further agrees that with respect to the above-required insurances, the City shall:

1. Be named as additional insured/or an insured, on all required insurance except workers' compensation. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for additional insured, checking those specific boxes is acceptable in meeting this requirement as well.

2. Be provided with a waiver of subrogation, in favor of the City on all required insurance. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for waiver of subrogation, checking those specific boxes is acceptable in meeting this requirement as well.
3. Be provided with an unconditional 30 days' advance written notice of cancellation or material change.
4. Prior to execution of this Agreement, proof of insurance shall be provided through the office of the City Secretary with either their original Certificate of Insurance or their insurance policy evidencing the above requirements. Thereafter, new certificates or copies of the policies shall be furnished prior to the expiration date of any prior certificate.

C. ADDITIONAL WORKER'S COMPENSATION INSURANCE REQUIREMENTS

1. Definitions:  
Certificate of coverage ("certificate") A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement showing statutory Worker's Compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractors'/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (subcontractor" in 406.096) - includes all persons or entitles performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements. Which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the contractor providing services on the project, for the duration of the project.
3. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
5. The contract shall obtain from each person providing services on a project, and provide to the governmental entity:
  - (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage for all persons providing services on the project; and
  - (b) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

## Non-Exclusion Affidavit for General Contractors

Federal, state, and local government agencies, not-profits, and other organizations that use federal money to fund all or part of any program or project are required to follow specific requirements regarding the use of such federal funds. One of these requirements is that no contract, subcontract, grant, financial assistance, or other forms of assistance provided using federal funds may be awarded to individuals or entities that have been suspended, debarred, or otherwise excluded from participation in federally funded programs.

The U.S. federal government maintains a Web site known as the "System for Award Management" (SAM) at [www.sam.gov](http://www.sam.gov). One of the purposes of the SAM Web site is to provide a comprehensive list of all individuals, firms, and other entities that have been suspended, debarred, or otherwise excluded from participation in federally funded contracts, subcontracts, grants, etc. SAM provides a simple means of helping government, non-profit agencies, and other organizations ensure that they do not award federally funded grants, contracts, subcontracts, or other financial or non-financial benefits to any individual, firm, or other entity that has been excluded by any agency from participation in such federally funded activities.

I, \_\_\_\_\_ (Contractor Representative), hereby certify that neither I nor \_\_\_\_\_ (Name of the company or organization I represent) nor any subcontractors that I or said company may employ to work on any federally funded activity have been suspended, debarred, or otherwise excluded by any federal agency from participation in any federally funded activity. I further acknowledge my understanding that, before entering into a contract with me or with the company or organization I represent, City of Mesquite staff will perform a search on [www.sam.gov](http://www.sam.gov) to verify whether I, the organization I represent, or any subcontractors I may employ to work on any federally funded activity, have been excluded from participation in any federally funded activity.

\_\_\_\_\_  
Signature of Contractor Representative

\_\_\_\_\_  
Date

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_

Notary Public in and for \_\_\_\_\_ County, \_\_\_\_\_ (Insert State Name)

**PROHIBITION ON CONTRACTS WITH  
COMPANIES BOYCOTTING ISRAEL**

Chapter 2271 of the Texas Government Code provides that the City may not enter into a contract\* with a company for goods or services unless the contract contains a written verification from the company that it: (i) does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. “Company” is defined to mean a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**\* The requirement applies only to a contract that: (1) is between the City and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from City funds.**

I, \_\_\_\_\_, the \_\_\_\_\_  
(Name of Certifying Official) (Title or Position of Certifying Official)

of \_\_\_\_\_, does hereby verify on behalf of said  
(Name of Company)

company to the City of Mesquite that said company does not Boycott Israel and will not Boycott Israel during the term of this contract.

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Certification

\_\_\_\_\_  
Date of Certification

## **PROPOSAL INFORMATION**

- A. The City of Mesquite, Texas (“City”) is seeking a Construction Manager at Risk firm (“CMAR”) to perform typical and complete Construction Management services in conjunction with the design, construction of new Fire Station No. 8. The CMAR will work with the City entities, staff, and any appropriate consultants.
- B. In seeking a CMAR, the City is looking for a qualified general contractor, with prior experience in the construction of fire station facilities or improvements similar to as set forth herein:
  - 1) The CMAR will be able to work with the Architect during the design phase, prior to construction, to analyze the Architect’s design, including the plans and specifications, to ensure the feasibility and constructability of the project design, and to assist in bringing the estimated construction cost of the project within the construction budget, through the selection of alternate construction systems, detailed and prompt cost estimating, scheduling, and other means, without adversely affecting the capacity and quality of the project; and
  - 2) The CMAR will propose a Guaranteed Maximum Price (GMP) for the construction of the project, which is within the approximate \$14 million project construction budget, after or during the preconstruction services, **and prior to a 100% set of construction documents**. It is the City’s intent that upon successful completion of the preconstruction services that the CMAR will serve as the general contractor for the project during the construction phase.

### **Statutory Requirements for a Construction Manager-at-Risk Contract under Texas Government Code Chapter 2269 - Contracting and Delivery Procedures for Construction Projects and City Requirements:**

- A. A “Construction Manager-at-Risk (CMAR)” is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design of the facility.
- B. Architects and Engineers: The City has selected ARCHITECT to prepare construction documents for the Project and who has full responsibility for complying with the requirements of Chapter 1051, Subtitle B of the Texas Occupations Code (Regulation of Architecture and Related Practices).

## Project Scope, Schedule, Payment, and Procurement:

### A. Scope of Work:

- 1) Preconstruction Services: The CMAR will work with the Architect and the City during the design process to ensure the feasibility and constructability of the building. The CMAR will also be responsible for cost estimates during both the schematic and design development phases of the project. The CMAR will work with the Architect and City to ensure that the cost of construction of the Project is within the estimated Construction Budget through the selection of construction systems and materials, detailed CSI format cost estimating, scheduling, and other means. The CMAR will also review the project schedule and identify critical path and long-lead items. **Upon the completion of the design development phase and prior to the completion of the 100% set of construction documents, the CMAR will submit a proposal of a Guaranteed Maximum Price (GMP) for the construction of the Project, which is within the City's Construction Budget.**
- 2) Bidding Services: Should the City exercise its option; the CMAR will serve as General Contractor to complete all work for the bidding and construction of the project. The CMAR will be responsible for coordination of all bids, advertisement, and solicitation, bid procurement, selection of sub-consultants or trade contractors as outlined in Texas Government Code Chapter 2269. CMAR will also be responsible for issuance of pre-purchase orders for long lead items, if required.
- 3) Construction Services: Should the City exercise its option; the CMAR will serve as General Contractor to complete all work for the construction of the Project. The scope of Construction services will be determined based on the final Drawings and Specifications and may include, but not be limited to, **one or more** of the following areas of work: site clearing, excavation, fill, select fill and backfill; site utilities; concrete sidewalks, paving and roadway / parking lot work, rough and finish grading, topsoil and grass planting; fencing and gates, site lighting, retaining wall construction, landscape installation, irrigation, concrete piers, concrete slab-on-grade, concrete masonry (CMU) interior walls, cast stone lintels, limestone and plaster exterior veneer, concrete floor topping, masonry, structural steel frame (columns and joists), metal roof deck, metal wall and roof panels, miscellaneous metals and metal fabrications; rough and finish carpentry, millwork and casework; damp proofing and waterproofing, caulking and sealants, thermal insulation, flashing and sheet metal, metal soffit panels, metal roofing, modified bitumen roofing; other roofing, wood doors, metal doors and frames, aluminum doors and frames, glass and glazing, finish architectural hardware, acoustical ceilings, resilient flooring and base, carpeting, tile or wood flooring, metal studs and support systems, gypsum drywall, painting and special floor coatings, interior and exterior signage; metal louvers and miscellaneous specialties; furnishings and appliances; equipment and specialty equipment; sound enhancement systems; fire protection; lightning protection; telecommunications, audio / visual and security systems and mechanical, plumbing and electrical systems, building demolition, asbestos abatement, debris haul off services and any other requirements set out in the Contract Documents.
- 4) The work does not include inspection services, and the materials testing services necessary for City's acceptance of the Project, which will be performed under a separate contract with an independent provider engaged directly by the City.



a) The facility will be a full-service fire station and the design will include a potential future addition for public safety offices for the Police Department. The project is anticipated to include, but is not limited to the following elements:

- 4 double-stack vehicle drive-through apparatus bays
- Public lobby and restrooms
- ICC 500 compliant storm shelter
- Watch room/Station Captain's office
- Storage areas
- Full -service kitchen with 3 individual pantries and refrigerators
- Dining room
- Day room
- Locker rooms and bathrooms
- Dorm rooms
- Officer quarters
- Laundry room
- Bunker gear room
- Exercise room
- Decontamination room
- Tool and equipment storage rooms
- MEP equipment and an emergency generator
- IT / Data room
- Outdoor cooking area
- Office space and restrooms for Police Department Offices (add/alternate)
- Site work required, including landscaping, signage, fencing and lighting
- Site utilities including water, sanitary, storm sewer and detention, electrical, gas, and telecommunications
- Driveways and parking lots

- 5) The **Location Map** and **Property Description** is included in as Attachment D at the end of this document. This document is included for information purposes only and no warrantee or guarantee is implied or expressed by the City. BY SUBMITTING A PROPOSAL, THE PROPOSAL UNDERSTANDS AND AGREES THE LOCATION MAP AND PROPERTY DESCRIPTION IS INFORMATIONAL ONLY AND SHALL NOT BE USED OR RELIED ON BY THE PROPOSER FOR ANY PURPOSES.
- 6) The City has impact and related costs for late completion. Liquidated damages of \$500.00 per day are anticipated and will be assessed for late completion.
- 7) A Field Office must be assembled on-site by the CMAR. The Field Office will provide office space for the CMAR field team, plus additional space for project meetings. The Field Office shall be equipped with a copier, printer, available power and Wi-Fi capabilities for computer equipment and telephone land line or cellular telephone.
- 8) CMAR staff at a minimum shall be a full time on-site general superintendent and project clerk, as well as a part time project manager and project executive. Percentages of part time staff shall be negotiated. CMAR project team staffing shall not be changed without the consent of the City.

B. Schedule:

The CMAR shall provide a proposed construction schedule with this submittal. This Schedule may be adjusted as a result of negotiations on submittals or preconstruction services and / or construction services provided by the CMAR.

C. Payment:

The City will make all construction payments directly to the CMAR, for their distribution of payments to the subcontractors and suppliers as appropriate. Accounting by the CMAR will be on a monthly line-item submittal based on a preapproved Schedule of Values. Release of lien for work to date, along with an updated schedule and project status report, will be required for each monthly payment requested by the CMAR.

D. Procurement:

- 1) The successful Offeror will enter into a Construction Manager-at-Risk Agreement (“Agreement”) with the City (where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price).
- 2) Prior to or at the time of execution of the Agreement, the CMAR must provide the City required insurance and the following required bonds on forms approved by the Mesquite City Attorney’s Office: bid, payment, performance, project maintenance.
- 3) The CMAR and all subcontractors must comply with the prevailing wage rate requirements described in the Agreement.
- 4) The CMAR must select subcontractors or trade contractors in accordance with the terms of applicable law and the Agreement, which are summarized as follows:
  - a) A CMAR shall publicly advertise and solicit either competitive bids or competitive sealed submittals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in general conditions. A CMAR may seek to perform portions of the work itself if the CMAR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the City determines that the CMAR’s bid proposal provides the best value for the City.
  - b) The CMAR, the Architect, and the City shall receive and publicly open all trade contractor or subcontractor bids or submittals in a manner that does not disclose the contents of the bid or proposal during the selection process. The CMAR will document the basis of its selection and make the evaluations public not later than the 7<sup>th</sup> day after the date the contract is awarded, as required by law. All trade or subcontractor bids are to be reviewed and approved by the City prior to award.
  - c) If the CMAR reviews, evaluates, and recommends to the City a bid or proposal from a trade contractor or subcontractor, but the City requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Agreement, the City shall compensate the CMAR by a change in Contract Sum, Contract Time, or Guaranteed Maximum Price for any additional cost and risk, which has been demonstrated to City’s satisfaction and as required by the Agreement, that the CMAR may incur because of the City’s requirement that another trade contractor or subcontractor bid or proposal be accepted.
- 5) The City reserves the right to contract separately with other consultants, suppliers and vendors as deemed in the best interest of the project.
- 6) The City may elect to procure certain materials / equipment / furnishings with coordination and scheduling support from the CMAR. The materials / equipment / furnishings would then be assigned to the CMAR with the full acceptance of coordination and installation. Proposal is to include coordination of the following potentially City-supplied equipment.
  - a) Computer and telecommunications equipment and installation

- b) Security and audio / visual equipment and installation
- c) Furniture installation
- d) Certain appliances as specified

## Notice to Offerors

### **Request for Proposals:**

The City of Mesquite, Texas (the "City") is accepting Submittals for a CMAR contract, pursuant to Section 2269 *et seq.* of the Texas Government Code, in accordance with the terms, conditions and requirements set forth in this Request for Proposals ("RFP").

**OFFERORS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.**

### **Pre-Submittal Conference:**

**A pre-submittal conference will be held at 10:00 a.m. on Tuesday, December 19, 2023, located on second floor at City Hall Building, 757 N. Galloway Avenue, Mesquite, TX 75149.** The purpose of this conference is to discuss with the Proposed Offerors the service to be provided and for the Proposed Offerors to ask questions arising from their review of the Request for Proposals. This pre-proposal conference is for informational purposes only. Answers furnished will not be official until verified in writing by the issuing office or department. Answers that change or substantially clarify the Request for Proposals will be affirmed in writing. Addendums will be issued on the City of Mesquite's bid website.

### **Submittal Format:**

Responses must comply with the Submittal Requirements set out in Proposal Information section of this RFP.

### **Submittal Deadline:**

**The City will accept Responses to this RFP until Thursday, December 28, 2023, at 2:00 p.m.,** after which time all responses timely received will be publicly opened, and the names of the Offerors read aloud. Responses received after the stated submission time will not be considered.

### **Place for Submission:**

**One (1) original and one (1) copy and one (1) electronic copy (USB) of the Proposal are required. Responses are to be delivered by December 28, 2023 at 2:00 p.m., to the City of Mesquite Purchasing Department by mail or hand delivery addressed to:**

Ryan Williams  
Manager of Purchasing  
Purchasing Division  
City of Mesquite  
757 N. Galloway  
Mesquite, Texas 75149

It is the responsibility of each Offeror to make sure responses are submitted in a timely manner. The City is not responsible for delays in mail delivery, or failure of couriers to deliver responses prior to the expiration of the deadline for submission. The City shall not be obligated to reimburse any expenses incurred by the Offeror in preparing a response that is not accepted or considered.

## **The City's Contact:**

For technical questions concerning this RFP, you may contact:

Billy Massey  
Assistant Fire Chief  
972-216-6308  
[bmassey@mesquitefire.org](mailto:bmassey@mesquitefire.org)

The City specifically requests that Offerors restrict all contact and questions regarding this RFP to the above named individual and asks that questions or requests for interpretation be submitted by email.

## **Inquiries and Interpretations:**

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum. Requests for interpretation or changes to this RFP must be received by the **City's Purchasing Division** ([purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com)) by the **time and date listed in Key Events Schedule** below. All such addenda issued by the City / Architect prior to the last date that submittals are required to be received shall be considered part of the RFP, and the Offeror shall be required to consider and acknowledge receipt of such in its Response. Firms receiving this RFP other than directly from the City are responsible for notifying the City that they are in receipt of a submittal package and are to register with the City of Mesquite's Ebid system. It is the obligation of the Offeror to make sure that it has received all addenda prior to submission of its Response. Offerors may obtain information on all addenda issued to the date of inquiry from the **City's Purchasing Division** ([purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com)). Only those responses to inquiries, which are made by formal written addenda, shall be binding. Oral and other interpretations or clarifications will be without legal effect and shall not be binding on the City. The Offeror must acknowledge receipt of all addenda in its Response.

## **Selection Procedure:**

The procedure for selecting the CMAR is described in Proposal Information section of this Request for Proposal.

## **Public Information:**

The City considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and / or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded.

Offerors are hereby notified that the City strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

## **Offeror's Acceptance of Evaluation Methodology:**

WAIVER OF CLAIMS: Each Offeror by submission of a Response to this RFP waives any claims it has or may have against the Architect, its consulting engineers, or any other consultants, and their respective employees, officers, members, directors and partners; and the City, its employees, officers and elected officials, agents, representatives, that are connected with or arising out of this RFP, including, the administration of the RFP, the RFP evaluation, and the selection of qualified Offerors to receive a Request for Proposals. Submission of proposals indicates Offeror's acceptance of the evaluation technique and Offeror's recognition that some subjective judgments must be made by the City during the determination of qualification. Without limiting the generality of

the foregoing, each Offeror acknowledges that the basis of selection and that the evaluations shall be made public in accordance with applicable law and waives any claim it has or may have against the above-named persons, due to information contained in such evaluations.

**Offeror’s Commitment:**

Offeror understands and agrees that the City has the ability to terminate its selection process at any time, and to reject any and all Responses, or any and all Submittals, and that the City has made no representation, written or oral, that it will award a contract for this Project. Furthermore, Offeror recognizes and understands that any cost incurred by the Offeror which arises from Offeror’s submittal of a Response to this RFP, or subsequent Proposal to the City’s Request for Proposals, if applicable, shall be the sole responsibility of Offeror.

**Offeror’s Eligibility:**

Only individual firms or formal joint ventures may respond to this RFP. Two firms may not respond jointly unless they have formed a joint venture. (This does not preclude an Offeror from having consultants.)

**Key Events Schedule:**

Currently, the City has established the following tentative timeline for its selection process:

Issue Request for Proposals	December 7 and 14, 2023
Pre-Proposal Conference	December 19, 2023, at 10:00 a.m. 757 N. Galloway Avenue, Mesquite, TX 75149
Interpretation Deadline	December 21, 2023, at 4:00 p.m.
Issue Addendum	December 21, 2023
RFP Deadline	December 28, 2023, at 2:00 p.m. 757 N. Galloway Ave., Mesquite, TX 75149
Interviews, if needed:	January 11, 2023
Recommendation to Award:	January 19, 2023

This timeline is subject to change by City.

## **PROPOSAL EVALUATION**

RFP shall be awarded to the best-value proposal. The proposals will be evaluated on the factors outlined below which shall be applied to all eligible, responsive proposals in selecting the successful offeror. Award of a contract may be made without discussion with proposers after responses are received. Proposals should, therefore, be submitted on the most favorable terms.

### ***Sealed Proposal Submission***

Proposals shall be sealed and clearly marked with the Proposer's name and return address and indicate the proposal number and title. Facsimile or e-mail submitted proposals will not be accepted. Responses received after the deadline cannot be considered and will be returned unopened. The City is not responsible for delays occasioned by the U.S. Postal Service, the internal mail delivery system of the City, or any other delivery method employed by the Proposer.

Proposers or their authorized representatives are expected to fully inform themselves as to the general terms and conditions, requirements, and specification of this Proposal Invitation before submitting proposals. Failure to do so will be at the proposer's own risk.

### **CRITERIA FOR EVALUATION IN ORDER OF IMPORTANCE:**

- |                   |     |
|-------------------|-----|
| 1. Qualifications | 55% |
| 2. Fees           | 20% |
| 3. Schedule       | 25% |

Negotiations may be conducted with responsible proposers who submit proposals determined to be susceptible of being selected for award. **All proposers will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.** Revisions to proposals may be permitted after submission and before award for the purpose of obtaining best and final offers.

### **Selection Process, Qualifications Being Sought and Evaluation Criteria:**

#### **A. Selection Process:**

- 1) The process for selection of a Construction Manager at Risk for this project will be a one-step process, as outlined in Texas Government Code Chapter 2269. The time period for responding to the RFP will be as set out on the first page of the RFP. After receiving the Submittals, the City will publicly open and read aloud the names of the parties providing submittals along with fees and prices (referred to herein as "Offerors") received in accordance with the submission deadline.
- 2) The City will evaluate and rank the Offerors based on the Selection Criteria set out in the RFP. Unless the City rejects all Submittals, the City will authorize negotiations with the first-ranked Offeror. If the parties cannot negotiate a successful agreement, the City will terminate negotiations with the first-ranked Offeror and commence negotiations with the second-ranked Offeror in the same manner. If an agreement is not reached, the City will proceed with this process, in order of ranking, until an agreement is reached, or all Submittals are rejected. The City reserves the right to reject any and all Submittals.

B. Qualifications Sought:

- 1) The Offeror's successful and cost-effective experience and expertise with municipal projects of similar size, scope, and quality.
- 2) The Offeror's past performance and demonstrated capability on similar projects with this or other local municipalities and on construction of publicly funded projects.
- 3) The Offeror's capability to provide the resources, including financial, equipment and staffing, necessary to meet project requirements.
- 4) The Offeror's proposed project personnel as shown in a project organizational chart and including their qualifications and municipal construction experience as evidenced by their resumes.
- 5) The Offeror's recent experience with project cost estimates, as well as project budget and schedule adherence.
- 6) The Offeror's safety record supported by accurate and verifiable data.
- 7) The Offeror's reference letters indicating the quality of previous work on similar municipal projects and satisfaction from past customers.

Consideration may also be given to any additional information and comments at the selection phase if it reflects on the Offeror's qualifications to perform the services required for this Project.

**Evaluation Criteria: Responses to Offeror's Questionnaire for RFP 2023-137 will be scored on a 100-point scale using the criteria below.**

**Contractor Qualifications – 55 points** to be awarded as follows:

General Information & Safety Record (10 points)

- Firm's number of years in business, size, and staffing
- Firm's financial health and stability
- Firm's safety record

Municipal Projects & Experience (15 points)

- Experience of the proposed project team on similar projects
- Firm's experience on projects of similar scope, size, and quality
- Quality of past construction; provide a list of municipal projects to tour

Contractor Staff Experience & Client Relationships (15 points)

- Project organization chart and resumes
- Reference letters
- Effective communications and cooperation

Adherence to Budget & Schedule (15 points)

- Current workload and availability to perform the work
- Firm's record of successful completion of municipal projects
- Recent experience with project cost estimates; provide examples
- Recent experience with project budget and schedule adherence

**Contractor Fees - 20 points**

- Proposed Phase I Preconstruction Services Fee (5 points)
  - *Note: A pre-construction service proposal of \$0 will be considered as non-responsive.*
- Proposed Phase II Construction Services Fee (15 points)



**Schedule - 25 points**

- Project schedule (number of months)
- Proposed project schedule with detail

**OFFEROR'S RESPONSE LETTER TO RFP 2023-137**

Ryan Williams  
Manager of Purchasing  
Purchasing Division  
City of Mesquite  
757 N. Galloway  
Mesquite, Texas 75149

Mr. Williams:

This response is being submitted by the undersigned, on behalf of the Offeror:

\_\_\_\_\_

The person signing this Response on behalf of the Offeror represents to City that:

- 1) The information provided herein is true, complete, and accurate to the best of the knowledge and belief of the undersigned; and
- 2) He / she has full authority to execute this Response on behalf of Offerors.
- 3) Offeror has received the Addenda to this RFP, specifically; Addenda numbered \_\_\_\_\_ and dated\_\_\_\_\_.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2023.

OFFEROR: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

Attachment: Responses to Offeror's Questionnaire

## OFFEROR'S QUESTIONNAIRE FOR RFP 2023-137

Offerors are required to submit a complete response to each of the below listed items. Responses requiring additional space should be brief and submitted as an attachment to the Offeror's Questionnaire.

1. Legal name of the company: \_\_\_\_\_

Authorized point of contact for the company:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Cell: \_\_\_\_\_

Address of office that would be providing service:  
\_\_\_\_\_

Main phone: \_\_\_\_\_ Direct phone: \_\_\_\_\_  
\_\_\_\_\_

Number of years in Business: \_\_\_\_\_

Type of Operation: Individual  Partnership  Corporation

Number of Employees: \_\_\_\_\_ Annual Sales Volume: \_\_\_\_\_

State whether you will provide a copy of your company's financial statements for the past two (2) years, if requested by the City. Yes  No

2. Provide a financial rating of your company and any documentation (e.g., a Dunn & Bradstreet analysis), which indicates the financial stability of the company.  
\_\_\_\_\_

3. Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.  
Yes  No

4. Provide any details of all past or pending litigation or claims filed against your company arising out of or in connection with your company's performance under a contract for construction management and / or construction services. Describe how such suit or claims were resolved.  
See attached explanation  N/A

5. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.  
Yes  No

6. Does any relationship exist between your company and any of City's officers, employees whether by relative, business associate, capital funding agreement or any other such kinship? If yes, please explain.  
Yes  No

7. Provide your company's safety data including your Experience Modifier Rate (EMR), Recordable Incident Rate (RIR) and Loss Indicator Rate (LIR).
8. Provide a minimum of three and a maximum of five projects with photos for which your firm has provided / is providing construction management or construction services which are most related to this project. In determining which projects are most related, consider same or related use of facilities; related size and complexity; whether the project consisted of an expansion of an existing facility or new construction; how many members of the proposed team (and their role) worked on the listed project; and how recently the project was completed. List the projects in priority order, with the most related projects listed first. City of Mesquite staff may request site visits of the projects your firm identifies.
9. For each of the listed projects, provide the following information: construction cost (original Budget, GMP and final construction cost), current phase of development, estimated (or past) completion date, type of construction services provided (CM at risk with GMP, CM-agency, design/build, general contractor-low bid, general contractor through sealed Submittals), owner's contact person and telephone number, and the name and telephone number of the project architect.
10. Describe your company's quality assurance program, what are your company's requirements, and how are they measured? In particular, describe the way your firm maintains quality control during the pre-construction and construction phases.
11. Provide a project organization chart along with resumes of key personnel; Project Manager, Estimator, and Superintendent that shows experience with projects of similar size, complexity, and scope.
12. Provide customer reference letters from no less than three (3) public entities with which Offeror currently has contracts and / or has previously provided construction management services of equal type and scope within the past five (5) years. **DO NOT USE REFERENCES FROM CURRENT CITY OF MESQUITE OFFICIALS.**
13. Describe your firm's past performance on other contracts for the City of Mesquite or other cities (e.g., cost control, cost savings, schedule control) and your firm's demonstrated technical competence and management qualifications with CMAR projects, particularly those that are similar to the proposed project type. Please provide specific examples and owners' contact information.
14. Provide details regarding any special services, management characteristics or other benefits / advantages offered for the City in selecting your company.
15. Provide a proposed project schedule in Gantt chart format for the project including major milestone dates.
16. Explain your firm's current workload and availability for this project. Please list current projects including number of staff committed, phase of development and projected completion date.

**PROPOSAL FORM RFP 2023-137**

**FIRM:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PRIMARY CONTACT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**OFFICE PHONE:** \_\_\_\_\_

**CELL PHONE:** \_\_\_\_\_

**PROJECT IDENTIFICATION:**

**PROJECT NAME:**        **New Fire Station No. 8**

**PRICING:**

Proposed Phase I (Design) Services Fee  
(Lump Sum with descriptions) \_\_\_\_\_

Proposed Phase II (Construction) Services Fee  
(% of the Construction Cost) \_\_\_\_\_

Project Schedule  
(Number of Months) \_\_\_\_\_

Please include additional lines as needed for the items above.

## **QUESTIONS**

Proposers are asked to examine this RFP upon request. All questions or clarifications shall only be directed in writing via e-mail to [purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com) before the designated deadline for written questions. Questions received after the date specified above may not receive response. Any contact or attempt to contact any other employee of the City regarding this RFP may result in the immediate disqualification of the Proposer. Oral and other interpretations or clarifications will be without legal effect. Only questions answered by formal written addenda will be binding.

## ***TERMINATION FOR DEFAULT***

The City of Mesquite reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. City of Mesquite reserves the right to terminate the **contract** immediately in the event the successful proposer fails to:

- ◆ meet delivery or completion schedules
- ◆ otherwise perform in accordance with the accepted proposal

Breach of contract or default authorizes the City to award to another proposer, purchase elsewhere, and charge the full increase in cost to the defaulting proposer.

## ***NON-PERFORMANCE CONDITION***

If the product or training is not in conformance with the specifications and requirements of the City, the vendor shall redo and complete any work necessary, bring the product or training into compliance at the

## REFERENCES

Five (5) Professional References (Include: Names, Addresses, Phone No's., Dates, Work Description and Contract Amounts.)

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **BID BOND**

Bidders shall submit a Cashier's or Certified Check or a Bid Bond from a reliable surety company in the amount of five percent (5%) of bid. If a Bid Bond is submitted, the forms provided herein must be complete and signed by a surety licensed to do business in Texas. Bid security should be enclosed in the same envelope with the bid. Bids without the required bid security are subject to disqualification.

The required bid security shall serve as a guarantee that the successful bidder will enter into a contract and execute any additional bond and guarantee forms provided within ten (10) days after notice of award of contract. If no additional bonds are required, said bid security shall serve as a guarantee that the successful bidder will deliver all material, equipment and/or services in accordance with the bid and specifications.

Such security financially protects the City against a bidder's failure to do any of the above and is subject to forfeiture as liquidated damages if the successful bidder fails or refuses to enter into the contract for any of the following reasons: 1) The successful bidder fails to provide insurance as required in the contract documents within five (5) business days of notification that bidder is the apparent low bidder. 2) The successful bidder fails, within ten (10) calendar days from award of the bid by the Mesquite City Council, to submit properly executed performance and payment bonds as required by the Contract. If no performance and payment bonds are required, such security is subject to forfeiture as liquidated damages if the successful bidder fails or refuses to deliver all materials, equipment and /or services in accordance with the bid and specifications.

If applicable, the city shall retain the bid security submitted by the two next lowest bidders until the successful bidder executes the contract and bonds and provides all insurance as required herein. If no additional bonds are required, the bid security will be retained until delivery of all materials, equipment and / or services in accordance with the bid and specifications. If either of the next two low bidders becomes the low bidder, that bidder shall be subject to the forfeiture provisions stated above. Bid security submitted by all other bidders shall be returned as soon as practicable after the bid opening.

**BID BOND**

Bond No.: \_\_\_\_\_  
(by Surety)

STATE OF TEXAS       §

  §     **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DALLAS §

**THAT** \_\_\_\_\_, of the City of \_\_\_\_\_, \_\_\_\_\_ County, State of Texas (hereinafter referred to as "Principal"), and \_\_\_\_\_, authorized under the laws of the State of Texas to act as Surety on bonds for principals (hereinafter referred to as "Surety") are held and firmly bound unto the City of Mesquite (hereinafter referred to as "City") in the penal sum of \$\_\_\_\_\_ (an amount equal to 5% of the approximate total amount of the bid or if the bid is based upon alternates and/or addenda, at least 5% of the greatest amount bid by the bidder or Principal herein as evidenced in the Bid Proposal) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents;

**WHEREAS** the Principal has submitted on or about this date, a bid proposal offering to perform the following: \_\_\_\_\_ **CITY CONTRACT NO.** \_\_\_\_\_ in accordance with the specifications and terms and conditions related thereto, to which reference is hereby made;

**NOW, THEREFORE**, the condition of this obligation is such that if the said Principal's offer as stated in the bid proposal is accepted by the City, and the said Principal executes and returns to the City the number of original counterparts of the contract required by the City, on the forms provided by the City, for the materials, equipment and/or services described herein and also executes and returns the same number of Performance, Payment and Maintenance Bonds, if required, on the forms provided by the City, within the time provided in the specifications, then this obligation is null and void, otherwise, it is to remain in full force and effect;

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument on this day of \_\_\_\_\_, 2023.

**PRINCIPAL:**

**SURETY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address  
*(P. O. Box is not acceptable)*

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

\_\_\_\_\_  
Phone Number  
*(Dallas Telephone Number)*

**SURETY'S DALLAS COUNTY REGISTERED AGENT FOR SERVICE (REQUIRED):**

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company: \_\_\_\_\_

Street Address: \_\_\_\_\_  
*(P. O. Box is not acceptable)*

\_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Phone Number: \_\_\_\_\_  
*(Dallas County Telephone Number)*  
***(Attach dated Power of Attorney for Surety)***

**ATTACHMENT A**

**CITY OF MESQUITE GENERAL CONDITIONS FOR BUILDING CONSTRUCTION**

## **NOTICE**

The following blank spaces in the contract are not to be filled in by the Proposer at the time of submitting his proposal. The contract form is submitted at this time to familiarize the Proposer with the form of contract, which the successful Proposer will be required to execute.

**ATTACHMENT B**

**CONSTRUCTION MANAGER-AT-RISK CONTRACT**  
**CONSTRUCTION OF NEW FIRE STATION NO. 8**  
**PHASE I**

THIS CONTRACT entered into this \_\_\_ day of \_\_\_\_\_, 2023, is by and between the **CITY OF MESQUITE**, a municipal corporation of Dallas County, Texas (hereinafter called "Owner"), and \_\_\_\_\_, a corporation authorized to conduct business in the State of Texas, with local offices located at \_\_\_\_\_ (hereinafter called "CMaR" or "Construction Manager-at-Risk").

**WITNESSETH:**

WHEREAS, the Owner intends to obtain construction management services in connection with the design (Phase I services) and construction (Phase II services, referred to in the General Conditions as the "Work") of New Fire Station No. 8 (hereinafter called the "Project") in the City of Mesquite and County of Dallas, Texas; and

WHEREAS, in connection with the Project, Drawings and Specifications will be prepared under a separate contract between the Owner and \_\_\_\_\_ [ARCHITECT] (hereinafter called the "Architect"); and

WHEREAS, in response to the Owner's request, CMaR has submitted a proposal to provide the Owner all Phase I construction manager-at-risk services (the "Work"); and

WHEREAS, the scope of the Work is generally the Phase I services as specified below and in the CMaR's Proposal in response to RFP 2023-137, dated \_\_\_\_\_, 2023, and in the CMaR's Best and Final Offer, dated \_\_\_\_\_, 2023, collectively attached hereto and made a part hereof as Exhibit 1; and

WHEREAS, the City of Mesquite has selected \_\_\_\_\_, as CMaR to perform the Work, and authorized the City Manager to enter into a contract with CMaR; and

WHEREAS, Owner has allocated a \_\_\_\_\_ fee for all Phase I CMaR compensation; and

WHEREAS, Owner has established that the total budgeted cost for completion of the Project, subject to additions or deletions by the Owner, shall not exceed \$14,000,000.00 (the "construction budget") inclusive of all cost associated with: (1) all Contractor and Subcontractor costs; (2) all General Conditions incurred by CMaR and all Contractors and Subcontractors; (3) all Construction Contingencies; and (4) CMaR's Fee; and

WHEREAS, CMaR understands that time is of the essence, and has agreed to undertake all efforts to expedite the performance of the Work set out below.

NOW, THEREFORE, Owner and CMaR, in consideration of the mutual promises, covenants, and agreements made in this Contract and of the terms and conditions contained in this Contract, agree as follows:

**ARTICLE 1**

**THE PROJECT DESCRIPTION, REQUIREMENTS AND EXTENT OF AGREEMENT**

1.1 CMaR has previously submitted its Proposal to the Owner, attached to and made a part of this Contract as Exhibit 1. In the event of a conflict between the terms of the Proposal and the terms of this Contract, the terms of this Contract shall control; provided, however, that this provision shall not be construed to relieve the CMaR from performing all Phase I services set forth in the Proposal. The CMaR accepts the relationship of trust and confidence established between it and the Owner by this Contract. It expressly covenants with the Owner

to furnish its best skill and judgment and to cooperate with the Architect, and Architect's consultants on the Project in furthering the interests of the Owner. It agrees to furnish, in connection with the Project, all Phase I services; and in the event this Contract is supplemented as provided for below at the election of the Owner, CMAr also agrees to provide all Phase II services. CMAr shall promote furtherance of the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner and the requirements of the Contract Documents.

1.2 CMAr agrees to work under the direction of the Owner with the Architect and Owner's other consultants from design through, to the extent Owner supplements this Contract, final completion of the Project, including the final two-year warranty inspection and resolution of all outstanding Project-related claims or disputes. The CMAr shall provide its expertise and services on all matters relating to design review; and following Contract supplementation, on all matters relating to Project construction.

1.3 Time is of the essence of this Contract. CMAr agrees to undertake all necessary efforts to expedite the performance of services required under this Contract, so that on-site construction of the Project can commence on schedule and be substantially complete on or before Late 2025, or any extension of the Contract Time granted by the Owner. In this regard, CMAr shall immediately commence design review, value engineering, scheduling, and budget-related services in connection with the Work and will continue these services until design documents are 100% complete and bids are received by CMAr. CMAr shall proceed with sufficient qualified personnel necessary to expedite and fully complete all services required under this Contract in the highest professional manner consistent with the requirements of the Contract Documents. CMAr's personnel assigned to the Project shall be subject to Owner's approval, and no change in key personnel set out in the Proposal shall be made unless approved by Owner. Owner's decisions in this regard shall not be the basis for any claim for additional compensation by CMAr.

1.4 This Contract shall be administered on behalf of the Owner by the City Manager or the City Manager designees. All Work under this Contract shall be reviewed and approved for the Owner by the City Manager or designees. CMAr shall fully comply with any and all directives or instructions from the City Manager or designees.

1.5 A schedule of performance of services hereunder shall be mutually agreed upon between CMAr, Architect and Owner as described below. Failure of CMAr to maintain progress in accordance with the agreed schedule shall be grounds for declaring CMAr in default except when CMAr is delayed by events exclusively beyond CMAr's control.

1.6 CMAr understands that Owner intends to have the Project fully completed within the time and budget limits stated in this Contract. CMAr agrees to perform the Phase I Work under this Contract consistent with that intention. Further, it is understood and agreed by CMAr that the Project is intended to be designed and built under construction bid packages utilizing multiple and concurrent construction trade contractors/subcontractors. If Owner accepts the Guaranteed Maximum Price developed by CMAr, all trade construction contracts awarded on the Project shall be publicly advertised for bid and awarded by CMAr pursuant to Sections 2269.255 and 2269.256, Texas Government Code, as amended.

1.7 For each division of the Phase II Work, the Architect, under separate contract with the Owner, will produce, assemble, and deliver to CMAr (through Owner and at CMAr's cost and expense) Drawings and Specifications. CMAr shall review the Drawings and Specifications as received and shall advise Owner and Architect within a reasonable period of time as to their acceptability, suitability, constructability, need for value engineering or other revisions, and any areas in which the Drawings and Specifications increase the scope and cost of the Project or extend the completion dates.

## **ARTICLE 2**

### **CONSTRUCTION MANAGER-AT-RISK'S SERVICES**

2.1.1 CMAr's Work under this Contract shall consist of the Design Phase described below and, following execution of the supplemental agreement at Owner's election, the Construction Phase. The description of Work is necessarily general rather than specific and detailed and shall not be construed so as to exclude any services

customarily provided by experienced and competent construction management organizations incident to construction projects of the nature and scope of this Project. The divisions and description of the Work under this Contract are intended only to add clarity and are not in contemplation of fixed events whereupon the character of CMAr's services will change from one type to another with respect to the Project, as it is anticipated that shortly after commencement of the Work under this Contract, CMAr will be simultaneously providing services identified in all divisions with regard to each portion of the Project.

2.1.2 CMAr understands and agrees that in the development and review of the design documents and the award of subsequent construction trade contracts, the General Conditions in all construction contracts to be awarded will be the City of Mesquite General Conditions for Building Construction (the "General Conditions"), along with such special provisions modifying the General Conditions as are agreed to by Owner in writing prior to their inclusion in the final construction bidding documents. CMAr's services under this Contract and under any supplemental agreement subsequently entered into are subject to the applicable provisions of the General Conditions as modified by special provisions approved in writing by Owner. Owner reserves the right, without paying any additional compensation to CMAr, to reject any bid proposed for acceptance by CMAr that is not based upon or takes exception to any of the provisions of the General Conditions specified above. Terms used in this Contract that are defined in the General Conditions shall have the meanings as described in the General Conditions unless otherwise indicated in this Contract.

## **2.2 DESIGN PHASE (Phase I Services)**

2.2.1 CMAr shall: (1) attend regularly scheduled meetings with Owner and the Architect during the development of the design and the Contract Documents and advise on site use, foundations and improvements, selection of materials, building systems and equipment; and (2) provide recommendations on construction efficiency and feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including costs of alternative designs, equipment or materials, preliminary budgets, and possible economies, without, however, assuming the responsibilities of the Architect.

2.2.2 CMAr shall develop and maintain the construction schedule (hereinafter called the "Schedule") as described in Paragraph 3.10 of the General Conditions. The Schedule shall be revised and updated to reflect actual Project status with each Application for Payment.

2.2.3 CMAr shall: (1) monitor the construction budget, which shall include all estimated CMAr compensation, including fees and reimbursable expenses; (2) prepare an estimate based on a quantity survey of the Project Drawings and Specifications for approval by the Owner as the final construction budget; (3) update and refine this estimate for Owner's approval as the development of the Project Drawings and Specifications proceeds; and (4) advise the Owner and Architect if it appears that the construction budget will be exceeded and make recommendations for alternate action.

2.2.4 CMAr shall review the Project Drawings and Specifications as they are being prepared, on the basis of value engineering, and recommend alternative solutions whenever design decisions, plans and details adversely affect construction efficiency and feasibility, budgeted costs, or schedules.

2.2.5 CMAr shall recommend the purchase or lease and procurement of long-lead items to endeavor to assure delivery by the required dates.

2.2.6 CMAr shall recommend to the Architect divisions in the Work and in the Drawings and Specifications to facilitate the bidding and awarding of contracts, allowing for phased construction, taking into consideration such factors as time of performance, minimization of worksite interference, on-time material and equipment procurement, availability of labor, overlapping trade jurisdictions, provision of temporary facilities, coordination and sequencing of the Project, minimization of overall Project costs, and availability of the Project site.

2.2.7 CMAr shall review the Project Drawings and Specifications with Owner and Architect to assure: (1) efficiency in the use of materials and methods of construction; and (2) coordination among the plan sheets and among the various bid packages. CMAr shall eliminate areas of conflict and overlapping in the phased construction packages to be performed by the various trade contractors/subcontractors. CMAr shall use and



include Owner's minimum wage rates and requirements for equal employment opportunity and minority business enterprise programs in the prepared trade bid packages.

2.2.8 CMAr shall confirm, by written memorandum to Owner with qualifications where necessary, review and approval as to construction feasibility for bidding purposes of the Architect's final Drawings and Specifications for every division or bid package of the Project, prior to final approval by Owner and public advertising for bids. Such review and approval as to construction feasibility, however, shall not be deemed an assumption by CMAr of any of the Architect's responsibilities, including errors and omissions in design. The Owner's standard bid documents and forms, including the General Conditions, Instructions to Bidders, Bid Bond, Performance and Payment Bonds, Wage Rates, and other standard City bid forms applicable to this Project, shall control the legal relationship between the Owner, the CMAr and the trade contractors/subcontractors, insofar as the actual performance of the Work is concerned and the rights and duties of parties in connection with the Work. Provided, however, that where conflict exists between such documents and this Contract, the provisions of this Contract shall be controlling. CMAr shall assist in the production of each set of final bid documents for each phase of the Project by combining the Owner's standard bid documents and forms with the Architect's final approved Drawings and Specifications, with such Special Provisions as may be necessary and for which CMAr shall be responsible for developing. In the event this Contract is supplemented to provide for performance of Construction Phase Services (Phase II) by the CMAr, and the Owner so elects to assign the phased construction work to CMAr following award by the Owner, each resulting subcontract between the CMAr and the successful low bidder shall incorporate the corresponding set of final bid documents.

2.2.9 CMAr shall: (1) develop contractor interest in the Project as contract Drawings and Specifications are completed; and (2) subject to the approval of the Architect and Owner, establish the bid schedules and schedules for pre-bid conferences, including on-site visits to endeavor to assure that prospective bidders understand the various site conditions, availability, coordination, and scheduling requirements.

2.2.10 **Guaranteed Maximum Price.** Prior to completion of CMAr's Design Phase Services and submission of trade bid packages to bidding, CMAr shall develop and submit to Owner a Guaranteed Maximum Price ("GMP") which is within the approximate \$14 million project construction budget, after or during the preconstruction services, and prior to a 100% set of construction documents based on the Architect's finished Design Development Drawings, with a full list of construction and performance items, additive and deductive alternates, and including CMAr compensation for fees and reimbursable expenses, all within the Construction Budget.

2.2.11 **Advertising for Bids.** If the GMP is accepted by Owner through a duly authorized supplemental agreement as described below in Paragraph 2.3 of this Contract, CMAr shall publicly advertise the trade bid packages in accordance with the requirements of Sections 2269.255 and 2269.256 of the Texas Government Code, as amended. Bid packages shall be reviewed by CMAr and Owner in accordance with the requirements of the supplemental agreement entered into for Phase II services. If CMAr is retained in Phase II only for the purpose of limited consulting services as described in Paragraph 2.3 of this Contract, Owner shall advertise the trade bid packages in accordance with applicable law and CMAr shall have the responsibilities for limited consulting services as are prescribed in a duly authorized Phase II supplemental agreement.

### **2.3 BIDDING AND CONSTRUCTION PHASE**

2.3.1 CMAr shall undertake Bidding and Construction Phase services (Phase II) only upon execution by Owner and CMAr of a supplemental agreement or agreements to this Contract, duly authorized by resolution of the Mesquite City Council, identifying all Phase II services, and specifying a not-to-exceed amount as additional compensation to be paid CMAr.

2.3.2 The supplemental agreement may specify, at Owner's election, that CMAr shall provide only limited consulting services during the Construction Phase, with the Owner publicly advertising for bids and contracting directly with each bidder. The CMAr will then act in an expanded capacity of providing continuing construction

management services, including scheduling, coordination, supervision, inspection, and administration of the Work. Owner shall look to CMaR in a fiduciary capacity to assist Owner in the completion of the Project. Alternatively, the supplemental agreement may provide for full construction manager-at-risk services under which CMaR shall enter into each construction contract, subject to the consent of the Owner, with responsibilities and pursuant to such procedures as have been utilized on other City projects involving a GMP arrangement. CMaR will thereafter act in a dual capacity of providing continuing construction management and construction services, the successful bidders in each instance constituting Subcontractors in privity only with the CMaR. Owner shall look solely to CMaR as a general contractor for the completion of the Project, the full responsibility for the construction of which CMaR shall accept. In this regard, CMaR acknowledges receipt of a copy of the City's standard form supplemental agreement for full construction manager-at-risk services and agrees to enter into a substantially similar agreement with the Owner for Phase II services on this Project should the Owner elect to proceed in such manner at Owner's sole discretion. In such event, the supplemental agreement shall stipulate a GMP for all costs of the Work necessary to complete the Project, including all CMaR compensation for general conditions, fees, and reimbursable expenses, as developed under Paragraph 2.2.10 above. The Project may be upgraded at Owner's election during construction by approving "add alternates" on a selective basis depending upon availability of funding and the magnitude of bids received.

2.3.3 CMaR shall furnish all copies of Drawings and Specifications necessary for the execution of the Project on a reimbursable basis, from reproducible originals furnished by the Architect.

### **ARTICLE 3**

#### **OWNER'S RESPONSIBILITIES**

3.1 The Owner shall provide information regarding its requirements for the Project, consistent with the Contract Documents and within the Scope of the Work.

3.2 The Owner shall designate a representative who shall be fully acquainted with the Scope of the Work and has authority to approve the Construction Budget, render decisions promptly and furnish information expeditiously; the City Manager or designee is designated by the Owner for this purpose subject to the provisions of Paragraph 1.4 of this Contract.

### **ARTICLE 4**

#### **FIXED LIMIT CITY BUDGET - TOTAL PROJECT COST**

4.1 The fixed limit of the construction budget for this Project is \$14,000,000.00 for all costs associated with construction of the Project. THESE AMOUNTS ARE ESTABLISHED AS A CONDITION OF THIS CONTRACT AND SHALL PROVIDE THE BASIS FOR CMAR'S DECISIONS AND RECOMMENDATIONS. CMaR, in consultation with Owner and in cooperation with the Architect, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents and recommend adjustments in the scope of the Project to assure that the construction budget is not exceeded.

4.2 With Owner's approval, CMaR may include alternate bids within the Contract Documents to adjust construction costs in order to assure that the construction budget is not exceeded.

### **ARTICLE 5**

#### **OWNERSHIP OF DOCUMENTS AND CMAR STATUS**

5.1 All of the CMaR's documentary work product under this Contract shall be the property of the Owner; and upon completion of this Contract, such documentary work product shall be promptly delivered to Owner in a reasonably organized form without restriction on its future use. Any necessary work product lost or destroyed by the CMaR shall be replaced or reproduced at the CMaR's sole cost. In addition, Owner shall have access, during the term of this Contract and for three (3) years after Contract termination, to all of CMaR's records and documents in connection with this Contract for purposes of auditing same at the sole cost of the Owner. Nothing in this Paragraph 5.1 shall be construed to deny CMaR the right to retain duplicates. Refusal by CMaR to comply with the provisions of this Paragraph 5.1 shall entitle Owner to withhold further payments to CMaR until compliance is obtained.

5.2 CMaR shall not be considered an employee of the Owner but shall occupy the status of an independent contractor of the Owner. CMaR shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling, or prioritizing the Workflow and determining how the Work is to be performed. No term or provision of this Contract or act of CMaR in the performance of this Contract shall be construed as making CMaR the agent, servant, or employee of the Owner, or making CMaR or any of CMaR's employees eligible for the fringe benefits, such as retirement, insurance, and worker's compensation, which the Owner provides its officers or employees. CMaR shall perform its tasks and duties consistent with such status and will make no claim or demand for any right or privilege applicable to an officer or employee of the Owner, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security, or retirement membership.

## **ARTICLE 6**

### **CONSTRUCTION MANAGER-AT-RISK'S COMPENSATION FOR PHASE I CONSTRUCTION MANAGEMENT SERVICES**

6.1 In consideration of the performance of Construction Management services under this Contract, Owner agrees to pay the CMaR compensation calculated in accordance with CMaR's proposal, attached to and made a part of this Contract as Exhibit 1, subject to Paragraph 6.5 below.

6.2 CMaR shall furnish to Owner a periodic statement of the Work performed, in a form satisfactory to Owner, with backup substantiation. Payment shall be made following review and approval of CMaR's periodic statement by Owner. No interest shall be due CMaR for any delay in payment caused by any claim or dispute by or between Owner and CMaR.

6.3 Final Payment shall be paid by Owner to the CMaR within thirty (30) days after Final Completion of all Work under this Contract and Final Acceptance of same by Owner.

6.4 CMaR will perform Additional Services, over and above the Scope of the Work, upon written instruction of Owner, should Owner determine same to be necessary. CMaR shall be compensated for such Additional Services following acceptance by Owner. CMaR shall undertake no Additional Services except pursuant to written supplemental agreement, setting out the scope and compensation for same, and Owner shall not be liable in any event for any such Additional Services except as undertaken in accordance with this Paragraph 6.4.

6.5 Total compensation for all Phase I services under this Contract shall not exceed \$\_\_\_\_\_, following receipt of invoices and approval of same by Owner. Owner shall not be liable for any payments in excess of the aforementioned amount, unless this Contract is amended by written supplemental agreement, executed by the parties, and fully authorized under the Charter and ordinances of the City of Mesquite. Any provision of the proposal in conflict with this Paragraph 6.5 is hereby withdrawn.

6.6 Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from CMaR, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

## **ARTICLE 7**

### **INSURANCE**

7.1 CMaR shall purchase, pay for, and maintain throughout the term of this Contract at least the minimum insurance as identified and required in Exhibit 2, attached to, and made a part of this Contract. Certificates evidencing such coverages and limits to be in force shall be provided to the Owner. Insurance costs and deductibles shall be the responsibility of CMaR. In the event Owner utilizes CMaR for Phase II services, the required minimum insurance coverages and limits may be adjusted pursuant to the requirements of the supplemental agreement.

**ARTICLE 8**  
**OWNER'S RIGHT TO TERMINATE; REMEDIES, DELAYS, AND**  
**CMAR'S RIGHT TO SUSPEND WORK**

8.1 The City Manager or designee may terminate this Contract, in whole or in part, for cause or for the convenience of the Owner. In such event, notice of termination, for all or any portion of the Work, shall be delivered to CMaR, who shall then be reimbursed by the City Manager or designee in accordance with the terms and provisions of this Contract, for all Work satisfactorily completed, but not to exceed actual costs incurred in connection with the Work to the date of termination. No amount shall be due for lost or anticipated profits. All Work-related documents and records shall become the property of Owner and shall be promptly delivered to Owner in a reasonably organized form without restriction on future use. Should Owner subsequently contract with a new construction manager for continuation of services on the Project, which right Owner specifically retains, CMaR shall cooperate in providing information.

8.2 Nothing contained in Article 6 or Paragraph 8.1 above shall require Owner to pay for services which are unsatisfactory as determined by the Owner, or services not in compliance with the provisions of this Contract. The City Manager or designee may withhold payments to CMaR when CMaR is in default under this Contract, without waiving any other remedy or right available at law or in equity, including the right to bring legal action for damages or to force specific performance of this Contract.

8.3 CMaR understands that time is of the essence. CMaR shall be fully responsible for delays in performance or for failure to use best efforts to accomplish the purposes of this Contract. However, neither Owner nor CMaR shall be deemed in violation of this Contract for delays in performance solely caused by circumstances beyond their respective control. In such event, notice of a delay due to reasons solely beyond the control of a party must be timely given and reasonable efforts undertaken to mitigate effects.

8.4 Except on an emergency basis, or for the protection of the Project or personnel at the Project site, or where CMaR observes construction being undertaken contrary to the Drawings or Specifications, CMaR shall not suspend the Work without Owner's permission.

**ARTICLE 9**  
**ASSIGNMENT, GOVERNING LAW, VENUE AND NOTICES**

9.1 This Contract shall be binding on the parties, their successors, assigns and representatives. CMaR shall not sell, assign, transfer, or convey this Contract, in whole or in part, to any person or entity without the prior written consent of City Manager. As an express condition of consent to any assignment, CMaR shall remain liable under this Contract for all obligations of CMaR and for the completion of the Work in accordance with the terms and conditions of this Contract in the event of default by the successor contractor or assignee.

9.2 This Contract shall be governed by and construed solely in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

9.3 The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

9.4 Except as otherwise specifically provided in this Contract, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this Paragraph. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:  
City of Mesquite  
Cliff Keheley, City Manager  
1515 North Galloway Avenue  
Mesquite, Texas 75149

If intended for CMaR, to:

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## ARTICLE 10

### **COMPLIANCE WITH LAWS, NON-DISCRIMINATION, AND FEDERAL FUNDS**

10.1 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Mesquite and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. CMaR shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules, and regulations, as amended.

10.2 As a condition of this Contract, CMaR hereby covenants that it will take all necessary action to ensure that, in connection with any work under this Contract, it and its subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, CMaR shall keep, retain, and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City upon request for purposes of evaluating compliance with this and other provisions of the Contract.

10.3 In the event Owner receives from any Federal agency funds to be utilized in construction of the Project, Owner shall notify CMaR of any terms, requirements, conditions, or restrictions attached to the use of the funds. Thereafter, CMaR shall assist Owner in notifying all affected bidders/contractors/subcontractors, and will include, to the extent necessary, all Federal requirements as a part of each and every trade contractor bid package on the federally funded portion of the Project. CMaR shall also comply with any applicable requirements and assist Owner with assembling the documents necessary to evidence compliance by each affected bidder/contractor/subcontractor.

## ARTICLE 11

### **RESPONSIBILITY FOR WORK; INDEMNIFICATION**

11.1 Approval by Owner shall not constitute nor be deemed a release of the responsibility and liability of CMaR, its employees, subcontractors, agents, or consultants, for the accuracy and competency of their services; nor shall such approval be deemed to be an assumption of responsibility by Owner for any defect, error, or omission in the Work prepared or performed by CMaR, its employees, subcontractors, agents, or consultants.

**11.2 CMAR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CMAR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CMAR, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS**

**PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH CMAR AND THE OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**ARTICLE 12**  
**CONSTRUCTION WORK BY THE CMAR AND**  
**CMAR'S ACCOUNTING RECORDS**

12.1 In the event CMaR performs a portion of the Work with its own forces pursuant to Section 2269.255, Texas Government Code, as amended, CMaR shall also continue to provide all construction management services to the extent provided under this Contract with respect to that portion of the Work. Further, Work performed by CMaR shall be completed to the full satisfaction of Owner; any disputes that may arise between CMaR and Owner in connection with the Work performed by CMaR shall be determined by Owner, whose decision shall be final and binding.

12.2 Records of direct salary costs, direct personnel expenses, and reimbursable expenses of CMaR and Subcontractors pertaining to the Project, and records of accounts between Owner and CMaR shall be kept by CMaR on a generally recognized accounting basis and shall be available to Owner or its authorized representatives at mutually convenient times. In the event CMaR performs a portion of the Work, all cost and other records relating to that portion of the Work shall be kept by CMaR separately from CMaR's records relating to its construction management services, in order to facilitate review or auditing by the Owner at its election.

**ARTICLE 13**  
**TERM**

13.1 Unless sooner terminated in accordance with the applicable provisions of this Contract, or extended by supplemental agreement approved by Owner, the term of this Contract shall be from the date of its execution until final completion of Phase I of the Project and all services in connection with Phase I.

**ARTICLE 14**  
**FINANCIAL INTEREST PROHIBITED; CONFIDENTIALITY**

14.1 CMaR covenants and represents that CMaR, its officers, employees, agents, consultants, and subcontractors will have no financial interest, direct or indirect, in product, materials or equipment that will be specified for the construction of the Project.

14.2. CMaR understands and agrees that the Charter of the City of Mesquite provides that no officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee guilty of a violation of the above-mentioned Charter provision shall there by forfeit his office or position with the City. Any violation of this prohibition with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City CMaR or the City Council.

14.3. CMaR's reports, evaluations, data, and all other documentation developed by CMaR under this Contract shall be kept confidential and shall not be disclosed to any third parties without the prior written consent and approval of the Owner.

**ARTICLE 15**  
**RIGHT OF REVIEW AND AUDIT**

15.1 Owner may review any and all of the services performed by CMAr under this Contract. Owner is granted the right to audit, at Owner's election, all of CMAr's records and billings relating to the performance of this Contract. CMAr agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this Article.

EXECUTED this the \_\_\_ day of \_\_\_\_\_, 2023, by Owner, signing by and through its City Manager, duly authorized to execute same by the City Council on \_\_\_\_\_, 2023, and by CMAr, acting through its duly authorized officials.

**CITY OF MESQUITE**  
**(OWNER)**

\_\_\_\_\_  
**(CONSTRUCTION MANAGER-AT-RISK)**

BY \_\_\_\_\_

Cliff Keheley  
City Manager

BY \_\_\_\_\_

PRINTED  
NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

ATTEST:

BY \_\_\_\_\_

Sonja Land  
City Secretary

BY \_\_\_\_\_

Corporate Secretary

APPROVED AS TO FORM:

BY \_\_\_\_\_

Assistant City Attorney

**Exhibit 1**  
**CMaR's Proposal**



**Exhibit 2**  
**Insurance Requirements**

**ATTACHMENT C**

**SUPPLEMENTAL AGREEMENT TO CONSTRUCTION MANAGER-AT-RISK CONTRACT**

**ATTACHMENT D**

**LOCATION MAP AND PROPERTY DESCRIPTION**