

THE STATE OF TEXAS §
COUNTY OF COLLIN §

**First Amendment to
the Professional Services Contract
with H W Lochner, Inc.**

THIS First Amendment to the Professional Services Contract with H W Lochner, Inc., BWR Division ("First Amendment") is entered into on this _____ day of _____, 2014, by and between the **CITY OF MCKINNEY, TEXAS**, a municipal corporation located in Collin County, Texas, (hereinafter referred to as "CITY"), acting by and through its City Manager or his designee, and **H W LOCHNER, INC.** ("hereinafter referred to as "CONSULTANT") whose address is 12001 North Central Expressway, Suite 1050, Dallas, Texas 75243.

W I T N E S S E T H:

WHEREAS, The CITY and CONSULTANT previously entered into that certain Professional Services Agreement ("Contract") for environmental site assessment services and associated support for Brownfields Grant Administration on or about the 11th day of March, 2011; and

WHEREAS, The CITY and CONSULTANT, now desire to amend the Contract as set forth in this First Amendment.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

1. Paragraph II of the Contract, entitled "Scope of Services," is hereby amended and revised to increase services to be provided under the Contract by the replacement of said Paragraph II in its entirety with the following Paragraph II to read as follows:

**"II.
Scope of Services**

CONSULTANT shall perform such services as are necessary to provide environmental site assessment services and associated support for Brownfields Grant Administration specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A-1" hereto entitled "Revised Scope of Work" (the "Project"). Attachment "A-1" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A-1" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto. Further, in the event of conflict in the language of former Exhibit "A" and Exhibit "A-1," the terms and conditions of Exhibit "A-1" shall control.

All work performed by the CONSULTANT will be performed under written Work Orders, based on the labor rates and unit rates described in Attachment "B," signed by a duly authorized agent of the CITY. Costs for items pertinent to a specific written Work Order not listed in Attachment "B" will be determined on a case by case basis. All Work Orders shall include a written description of proposed tasks, a task-specific schedule, and a task-specific cost proposal."

2. Paragraph III of the Contract, entitled "Payment for Services," is hereby amended and revised to increase the total amount of compensation to be paid under the Contract by the replacement of said Paragraph III in its entirety with the following Paragraph III to read as follows:

**"III.
Payment for Services**

Total payment for services described herein shall be a sum not to exceed Three Hundred Ninety Four Thousand and 30/100 Dollars (\$394,030.00).

CONSULTANT will bill CITY on an hourly basis at the hourly rates described in Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by CITY in writing to proceed. The scope of services shall be strictly limited. CITY shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless CITY shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month, CONSULTANT will submit to CITY an invoice for actual services performed by CONSULTANT during the previous month. Each invoice shall be itemized to show the amount of work performed for each Work Order during that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work performed by each such person. Each invoice shall also state the percentage of work completed for each Work Order, the total of the current invoice amount and a running total balance for each Work Order for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice CITY shall make monthly payments in the

amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default."

3. Paragraph VIII of the Contract, entitled "Insurance Requirements," is hereby amended by changing the name of the CITY's third-party insurance certificate tracking and management contractor from "Periculum Services Group" to "Ebix BPO" such that the third sentence of Subparagraph A of Paragraph VIII of the Contract shall hereafter read as follows:

"Certificates shall reference the project/contract number and be addressed as follows:

City of McKinney
c/o Ebix BPO
PO Box 257
Portland, MI 48875"

4. Paragraph XVIII of the Contract, entitled "Mailing Address," is hereby amended and revised to update the contact and mailing address information under the Contract by the replacement of said Paragraph XVIII in its entirety with the following Paragraph XVIII to read as follows:

**"XVIII.
Mailing Address**

All notices and communications under this CONTRACT to be mailed to CITY shall be sent to the address of CITY's agent as follows, unless and until CONSULTANT is otherwise notified:

City of McKinney
Planning Department
Attn: Matt Robinson
Post Office Box 517
McKinney, Texas 75070

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of

CONSULTANT as follows, unless and until CITY is otherwise notified:

H W Lochner, Inc.
Attn: Bob Helmberger, P.E., Vice President
12001 North Central Expressway
Suite 1050
Dallas, Texas 75243

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party."

5. Attachment "A," entitled "Scope of Services," to the Contract is hereby amended and replaced in its entirety with a new scope of services that is labeled as Exhibit "A-1" and entitled "Revised Scope of Services" and which new exhibit is attached to this First Amendment and incorporated herein by reference and made a part hereof and of the Contract by reference as if written word for word and originally attached to the Contract. In case of any conflict between the language of Exhibit "A" and Exhibit "A-1," the terms and provisions of Exhibit "A-1" shall control.

6. All other provisions, terms and sections of the Contract shall remain in full force and effect, and this First Amendment to the Contract shall in no way release, affect or impair any other provision or responsibility contained in the Contract.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

CITY OF MCKINNEY

By: _____
JOSE MADRIGAL
Deputy City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

H W LOCHNER, INC.

By: _____

Name: _____

Title: _____

Date Signed: _____

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared JOSE MADRIGAL, Deputy City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 2014.

Notary Public Collin County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2014, by _____ in his capacity as _____ of **H W LOCHNER, INC.**, a Wisconsin Corporation, known to me to be

the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **H W LOCHNER, INC.**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 2014.

Notary Public _____ County, Texas
My commission expires _____

ATTACHMENT "A-1"

REVISED SCOPE OF WORK

The City of McKinney (City) has been awarded two (2) Environmental Protection Agency (EPA) Brownfields Assessment Grants totaling \$400,000 (\$200,000 for hazardous substances contamination and \$200,000 for petroleum contamination) for the period October 1, 2010 – September 30, 2014. H W Lochner, Inc. (Consultant) has been selected to provide environmental site assessment services and associated support to the City for brownfields grant administration.

In general, Consultant shall provide services including, but not limited to:

1. Provide assistance and support with community education and stakeholder outreach.
2. Conduct Phase I Environmental Site Assessments on selected properties (hazardous substance sites and petroleum sites) and coordinate assessment activities with regulatory requirements of the Texas Commission on Environmental Quality (TCEQ) and EPA.
3. Conduct Phase II Environmental Site Assessments on selected properties (hazardous substance sites and petroleum sites) and coordinate assessment activities with regulatory requirements of the TCEQ and EPA (conforming with 40 C.F.R. 312 and 70 Fed. Reg. 66070).
4. Provide assistance and support with identifying clean-up options and costs and initiating the development of clean-up plans.

Consultant will perform Phase I Environmental Site Assessments in strict compliance with ASTM E-1527, *Phase I Environmental Site Assessment Process*. Consultant will develop Quality Assurance Project Plans (QAPPs) prior to all Phase II Environmental Site Assessments. The QAPPs specify detailed procedures to assure quality data for each site assessment, related fieldwork or goods required. For Environmental Site Assessment activities that require the development of a QAPP, the McKinney Brownfields Assessment Project will adhere to the Data Quality Objective (DQO) process as described by the EPA Quality Assurance document entitled *Guidance for the Data Quality Objectives Process*, EPA QA/G-4. All Brownfields site assessment data collection shall adhere to the EPA's *Guidance for Data Usability in Site Assessment* document.

Consultant may employ subconsultants/subcontractors as the Consultant deems necessary to assist in the performance or furnishing of services described in this Scope of Work. Subconsultants/subcontractors shall be mutually agreed upon by Consultant and City. Consultant shall not be required to employ any subconsultant/subcontractor which is unacceptable to Consultant, and Consultant shall not employ any subconsultant/subcontractor which is unacceptable to City. Regarding utilization of small, minority, and women's business enterprises for subconsultants/subcontractors, Consultant is required to comply with the six good faith efforts promulgated by 40 C.F.R. Part 33, Subpart C.

The City is responsible for all general programmatic/grant management duties including contract administration, payments, and general oversight. The City is responsible for overseeing the Consultant's activities and working with Consultant during the assessment process. The City facilitates group processes, which guide the general progress of the Brownfields Project. Throughout the project, the City is responsible for identifying, characterizing, and prioritizing sites within its municipal boundaries for environmental assessment. The City is also primarily responsible for conducting community outreach and involvement throughout the assessment process.

The City shall do the following in a timely manner so as not to delay the services of the Consultant:

1. Designate in writing a City Staff person to act as Consultant's duly authorized agent with respect to the services to be performed or furnished by the Consultant under this Scope of Work. Such person shall have authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to the Consultant's services for the Project.
2. Make available to the Consultant all existing records, maps, plans, and other information possessed by City which are relevant to the Consultant in the completion of the work under this Scope of Work.
3. Furnish to the Consultant, upon the request of the Consultant for performing the services, data prepared by or services of others, including explorations and tests of subsurface conditions at or contiguous to the work, drawings of physical conditions in or relating to existing surface or subsurface utilities or structures at or contiguous to the work, hydrographic surveys, environmental assessments, impact assessments and other relevant environmental or cultural studies pertaining to the work and adjacent areas.
4. Furnish existing relevant property descriptions, City regulations (zoning, subdivision, municipal setting designation, etc.), deed and other land use restrictions.
5. Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for Consultant to perform services under this Scope of Work.