

**CITY OF PFLUGERVILLE STANDARD CAPITAL IMPROVEMENT PROJECT (CIP)  
PROCUREMENT AGREEMENT BETWEEN CITY AND OFFEROR**

**THIS AGREEMENT** is entered into by and between City of Pflugerville, Texas (CITY) and T. Morales Company Electrical & Controls, Ltd. (OFFEROR). CITY and OFFEROR agree as follows:

**SECTION I. Generally.**

**Terms.** Terms used in this Agreement, unless the context clearly indicates otherwise, will have the meanings indicated in the General Conditions attached hereto.

**Work.** OFFEROR shall complete all Work as defined in the General Conditions, and as specified or indicated in the other Contract Documents. The Work is generally referred to as City of Pflugerville Wilbarger Creek RWWTF Electrical Distribution Equipment Pre-Purchase regardless of whether the Work may only be a part of the Project, with the Work being generally described as follows:

Major items of the Work include providing the Main Electrical Distribution Equipment for the Wilbarger Creek Regional Wastewater Facility Project such as:

- Medium Voltage Metal-Clad Switchgear
- Pad-Mounted Transformers
- Low Voltage Switchboards
- Low Voltage Motor Control Centers
- Low Voltage Variable Frequency Drives

**The Project.** The Project, for which the Work under the Contract Documents may be the whole or only a part of, is generally described under Article I above.

**Design Consultant.** The Design Consultants for the Project are:

Garver  
Greg Swoboda  
[GTSwobodoa@GarverUSA.com](mailto:GTSwobodoa@GarverUSA.com)  
210-268-4707  
3755 S Capital of Texas Hwy #325  
Austin, TX 78704

Gupta & Associates, Inc.  
VK Gupta  
[VKG@gaiconsulting.com](mailto:VKG@gaiconsulting.com)  
972-490-7661  
13717 Neutron Road  
Dallas, TX 75244

who is referred to as such in the Contract Documents for the purposes stated therein. The CITY shall provide written notice to the OFFEROR if any information regarding this designation should change during the course of this Agreement.

The Project will require the purchase of Electrical Distribution Equipment which are experiencing long lead time after the Engineers approval of shop drawings. Due to the highly sensitive schedule of the project the CITY and OFFEROR hereby agree to the following special terms and conditions:

1. Assignment of Agreement to Prime Contractor: Concurrently with the execution of the Construction Agreement between CITY and Prime Contractor, all rights, interests and responsibilities (“contractual obligations”) belonging to the CITY shall be assigned to the Prime Contractor.
2. OFFEROR to begin developing shop drawings immediately after Notice of Award and to submit them for review no later than the time allotted.

**SECTION II. Contract Times/Liquidated Damages.**

*Time of the Essence.* All time limits for Milestones, if any, Substantial Completion, and Final Completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

*Milestones, Substantial Completion and Final Completion.* The Work will be Substantially Completed within \_\_\_ days after the date when the Contract Times commence to run as provided in the General Conditions, and Finally Completed and ready for final payment in accordance with **Section 10.2** of the General Conditions within \_\_\_ days after the date when the Contract Times commence to run.

*Liquidated Damages.* OFFEROR and CITY recognize that time is of the essence of this Agreement and that CITY will suffer financial loss if the Work is not completed within the times specified in **Section II** herein above, plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, CITY and OFFEROR agree that as liquidated damages for delay, but expressly acknowledged herein as not being a penalty, **OFFEROR shall pay CITY \$2,500 for each day that expires after the time specified in Section II herein for Substantial Completion until the Work is Substantially Complete.** After Substantial Completion, if OFFEROR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by CITY for Final Completion, **OFFEROR shall pay CITY \$1,000 for each day that expires after the time specified in Section II herein for Final Completion and readiness for final payment until the Work is completed and ready for final payment.**

**SECTION III. Contract Sum.**

CITY shall pay OFFEROR (through the Prime Contractor) for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the following, as applicable:

- (1) For all Work other than Unit Price Work, a Lump Sum of:

\_\_\_\_\_ (\$ \_\_\_\_\_).

- (2) For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as follows:

See OFFEROR’S SUBMITTED BID PROPOSAL, which is incorporated herein by reference for all purposes.

	Seven Million One Hundred Six Thousand	
Sum of all Unit Prices:	Six Hundred Forty-Five Dollars	\$ 7,106,645.00 (dollars).

**SECTION IV. Payments.**

Submittal and Processing of Payments. OFFEROR shall submit Applications for Payment in accordance with **Article X** of the General Conditions. CITY shall make progress payments on account of the Contract Sum on the basis of OFFEROR's Applications for Payment in accordance with **Article X** of the General Conditions. Prior to Final Completion, progress payments will be made in accordance with **Article X** of the General Conditions.

#### **SECTION V. Representations.**

Representations. In order to induce CITY to enter into this Agreement OFFEROR makes the following representations in addition to those otherwise provided in the Contract Documents:

(1) OFFEROR has comprehensively evaluated the Contract Documents and the other information identified in the Bidding Documents and has visited the Project Site and is satisfied as to the Site conditions that may affect completion of the Work.

(2) OFFEROR has further carefully evaluated all: (a) information regarding subsurface conditions at or contiguous to the Site and all drawings relating to existing surface or subsurface structures at or contiguous to the Site that have been identified in the Contract Documents, if any; and (b) information regarding a Hazardous Environmental Condition, if any, at the Site as identified in Contract Documents.

(3) OFFEROR has obtained and carefully evaluated all additional or supplementary information concerning surface and subsurface conditions at or contiguous to the Site that may affect OFFEROR'S completion of the Work for the stated Contract Sum within the stated Contract Time. Accordingly, based on said evaluations, OFFEROR hereby acknowledges and confirms that no additional information is necessary for the performance of the Work at the Contract Sum, within the Contract Times, and in accordance with the conditions of the Contract Documents.

(4) Finally, OFFEROR has provided written notice of all discrepancies that OFFEROR has discovered in the Contract Documents to the City or Design Consultant, and hereby acknowledges that all such discrepancies have been resolved sufficiently by the Design Consultant

#### **SECTION VI. Additional Terms.**

Controlling Law/Venue. This Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for any dispute resolution or legal proceedings lies exclusively in the Courts of Travis County, Texas.

Waiver. The failure of either Party hereto to enforce any provision of this Agreement does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Agreement.

Third Party Beneficiaries. Nothing in this Agreement is intended to be by the Parties hereto or shall be construed to create rights in any person or entity other than the Parties hereto.

Execution. This Agreement may be executed in one or more counterparts and may be exchanged by facsimile or other electronic means. It is stipulated and agreed that any counterpart containing a signature or facsimile signature of the authorized representatives of the respective Party will be deemed an original for all purposes.

Authorization. OFFEROR represents that OFFEROR has the power and authority to execute and enter into this Agreement. The execution and delivery of this Agreement and the performance of the Work hereunder has been duly authorized by all necessary corporate action, if applicable. Upon execution, this Agreement will

constitute the binding and valid obligations of OFFEROR and shall be enforceable in accordance with its terms. OFFEROR further represents that it is in good standing in and qualified to do business in the State of Texas.

*CITY Ordinance Compliance and Certification.* OFFEROR represents that OFFEROR has fully read and understood the terms and conditions for eligibility to contract with the CITY pursuant to Chapter 38 of the CITY'S Code of Ordinances and by entering into this Agreement certifies that OFFEROR is qualified to contract with the CITY compliance with all applicable requirements.

*Texas Government Code Compliance.* OFFEROR acknowledges that the CITY may not enter into an Agreement with a company for goods and services unless the Agreement contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270). OFFEROR, by entering into this Agreement, hereby verifies and certifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

*Certificate of Interested Parties (TEC Form 1295).* OFFEROR acknowledges that for contracts needing CITY Council approval, the CITY may not accept or enter into a contract until it has received from the OFFEROR a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. OFFEROR understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the CITY. The TEC Form 1295 may accompany the bid or may be submitted separately but must be provided to the CITY prior to the award of this Agreement. Neither the City nor its Design Consultant have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising OFFEROR with respect to the proper completion of the TEC Form 1295.

*Assignment of Contract.* Subject to the special terms and conditions as stated above in Section 1, assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound in accordance with the General Conditions.

*Successors and Assigns.* CITY and OFFEROR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

*Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and OFFEROR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

*Remainder of this Page left Intentionally Blank.*

In consideration for the mutual obligations, representations, terms and conditions herein recited, CITY and OFFEROR have agreed to and signed this Agreement to be effective on January 10, 2023, (Effective Date).

**CITY OF PFUGERVILLE, TEXAS:**

**OFFEROR:**



By: \_\_\_\_\_  
Sereniah Breland, City Manager

By: Tye Eldridge, Vice President  
Name/Title

Attest \_\_\_\_\_  
Trista Evans, City Secretary



Attest \_\_\_\_\_

By: Sid Woodmansee, Project Manager  
Name/Title

Address for giving notices:  
\_\_\_\_\_  
Pflugerville, Texas 78660

Address for giving notices:  
PO Box 1113  
Georgetown, Texas 78627

CITY'S Designated Representative:  
Name: Kevin Jaeger, P.E.  
Title: Project Manager  
Address: 15500 Sun Light Near Way, #B  
Pflugerville, Texas 78660  
Phone/Fax: (512) 990-6419  
Email: KevinJa@PflugervilleTx.gov

OFFEROR'S Designated Representative:  
Name: Randy Eldridge  
Title: COO  
Address: PO Box 1113  
Georgetown, Texas 78627  
Phone/Fax: 254-793-4344  
Email: reldridge@moralescompany.com