

COUNCIL MEETING DATE: SEPTEMBER 1, 2020



## CITY COUNCIL AGENDA ITEM #9

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**STAFF PREPARER: SYLVIA CARRILLO, CPM, ICMA-CM, CITY ADMINISTRATOR**

SPONSOR: Mayor Cardona/Administration

**SUBJECT: ADMINISTRATION – CONTRACT RESIGNATION AND ACCEPTANCE OF AN ALTERNATE CONTRACT**

**DESCRIPTION:** Consider and act on accepting a letter of resignation from MillerGray & Associates, and appointing Freeland Turk Engineering Group (FTEG), LLC as the City's engineer pursuant to RFQ 2020-01.07.2020. (Mayor Cardona/Administration)

**BACKGROUND:** After the August 4, 2020 City Council meeting, the City has decided to accept the letter of resignation from MillerGray and Associates and accept the second highest scoring firm to RFQ-2020-01.07.2020, Freeland Turk.

The associated scoring sheets, prior company bill rates and proposed bill rates are all included in the backup to this item. The General Services Agreement and Master Contract reads verbatim to the MillerGray agreement and contract. Upon approval, allow the City Attorney to review the final contract before signature.

**APPLICABLE CODE SECTIONS:** City of Sunset Valley Financial Policies

**FUNDING:** NA

**STAFF RECOMMENDATION:** Approve

**SUPPORTING MATERIALS PROVIDED:** YES

- MILLERGRAY RESIGNATION
- FREELANDTURK PROPOSED MASTER CONTRACT
- SCORING SHEETS
- MILLERGRAY COST SHEET

August 25, 2020

Mayor Rose Cardona Hargrave, Esq.  
City of Sunset Valley  
3205 Jones Road  
Sunset Valley, Texas 78745

C/O Ms. Sylvia Carrillo, CPM, ICMA-CM  
City Administrator  
City of Sunset Valley  
3205 Jones Road  
Sunset Valley, Texas 78745

*Delivered via email scarrillo@sunsetvalley.org*

**Re: General Consulting Engineering Services – Master Contract  
Notice of Termination**

Dear Mayor Cardona,

It has been a privilege to serve the City of Sunset Valley. We appreciate the City's commitment to public health and safety and protecting its environmental resources by providing the citizens quality and fiscally responsible public infrastructure. We further appreciate the opportunity afforded to us and the experience gained through working on a variety of challenging and successful projects with City staff.

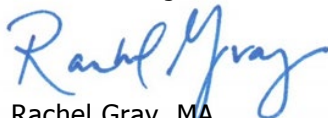
However, it is our understanding that the City of Sunset Valley desires to pursue other options for professional engineering services. As discussed with the City Administrator, Miller Gray agrees to terminate the General Consulting Engineering Services – Master Contract between the City of Sunset Valley and Miller Gray LLC. The timeline for closing out any on-going work orders is at the discretion of the City. Please accept our offer to both coordinate with whomever the City selects for future engineering needs and serve as a reference for knowledge of past projects.

Through our work with several Mayors, City Council members, citizens, and City staff since 2004, we forged numerous professional relationships that we will always cherish. We wish the City well as it continues to grow and thrive, and we welcome any opportunity to be of service in the future.

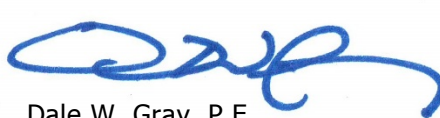
Sincerely,

**MillerGRAY**

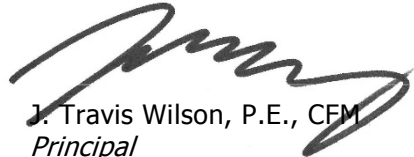
TBPE Firm Reg. No. F-16302



Rachel Gray, MA  
President/CEO



Dale W. Gray, P.E.  
Principal



J. Travis Wilson, P.E., CFM  
Principal

Cc: Heidi Petmecky, *Chief Financial Officer* – Miller Gray LLC

August 26, 2020

Ms. Sylvia Carrillo, CPM, ICMA-CM  
City Administrator  
City of Sunset Valley  
3205 Jones Road  
Sunset Valley, TX 78745

**Re: Proposal for General Consulting Engineering Services – Master Contract**

Dear Ms. Carrillo:

Freeland Turk Engineering Group, LLC (FTEG) is pleased to present this proposal to the City of Sunset Valley (“Client”) to provide general consulting engineering services on an as-needed (task order) basis. This letter, General Agreement for Engineering Services and Consulting – Master Contract (“Agreement”), and FTEG Billing Rates will serve as the master contract. Each task will be scoped and authorized separately through a Task Order Request.

**FEE SUMMARY**

Unless otherwise described in the Task Order Request, the scope of services will be provided for the estimated fees described in the Task Order Request plus miscellaneous and reimbursable expenses, and subconsultant management fees in accordance with the Agreement and FTEG Billing Rates, which may be adjusted periodically but no more frequent than annually. Generally, fees for the services will be invoiced monthly for the services performed that month (percent complete for lump sum tasks and hourly for hourly tasks).

Any additional or out-of-scope services will be provided on an hourly basis or be described and authorized in a Task Order Request. The Client will be notified prior to the initiation of any such services.

If the terms of this Master Contract and enclosed Agreement meet with your approval, please sign in the spaces provided on both documents and return copies for our records.

We thank you for this opportunity to provide this proposal and we look forward to working with you. If you have any questions, please call me at (830) 322-6208 or email [tturk@freelandturk.com](mailto:tturk@freelandturk.com).

Sincerely,

Thomas N. Turk, P.E.  
Principal

Attachments: General Agreement for Engineering Services and Consulting

Accepted By:

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Client

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Signature Date

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Printed Name / Title

## **GENERAL AGREEMENT FOR ENGINEERING SERVICES AND CONSULTING**

This agreement (Agreement) is between FREELAND TURK ENGINEERING GROUP, LLC (“Engineer”) and City of Sunset Valley (“Client”) for Services associated with the Project. These general terms and conditions shall govern all services rendered by Engineer to Client described in the initial letter proposal (“Basic Services”), any additional services requests (“Additional Services”), and all reimbursable expenses incurred, referred to collectively as the Services (“Services”). Client hereby engages Engineer to perform the Services and to commence the Services upon execution of this Agreement and /or separate authorization of the Client. Client and Engineer agree that this Agreement and attachments referred to herein constitute the entire agreement between them relating to the Project.

### **Project:**

To be defined in separate **Task Order Requests** [rips1] from Client.

### **ARTICLE 1 – SERVICES**

1.1 The initial scope of services for each project are described in separate task order requests between Engineer and Client. Subsequent scopes of services are described in additional services requests.

### **ARTICLE 2 – DUTIES**

#### **2.1 Engineer’s Responsibilities:**

2.1.1 General – The Engineer shall perform or furnish the Services described under this Agreement. Engineer shall generally use its own forces and staff; however, it may choose to use select independent contractors or subconsultants.

2.1.2 Compliance – Engineer shall perform the Services in accordance with generally accepted engineering standards commensurate with the local engineering profession and to comply with all applicable local, State and Federal laws and regulations pertaining to the Services.

2.1.3 Other Information – Engineer may rely upon commonly used or publicly available sources of data. Engineer does not warranty the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

#### **2.2 Client’s Responsibilities:**

2.2.1 Access – The Client will provide the Engineer and its subconsultants safe and legal access to the property or to any other site or premises as required by the Client for performance of the Services.

2.2.2 Client Furnished Data – The Client shall furnish engineer with all reports, studies, site surveys, prior surveys, regulatory orders, any hazardous materials in or around the site, location of underground structures and storage tanks, previous work and permits, and similar information in its possession relating to the Project. Client acknowledges that Engineer may rely upon the accuracy, timeliness, and completeness of the information, without independent verification unless otherwise indicated or as expressly provided in the Services, provided by the Client or any of the Client’s contractors or consultants.

2.2.3 Permits – Except as expressly provided in the Services, Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving all notices to, all government and quasi-governmental authorities having jurisdiction over the Services, the Project or the Property. Upon request, Client shall provide Engineer evidence satisfactory to Engineer that all required permits or other approvals have been obtained and that all required notices have been given, including copies of such permits or notices.

### **ARTICLE 3 – COMPENSATION**

3.1 Agreement to Pay: Client agrees to pay Engineer for the Basic Services, Additional Services, and Reimbursable Expenses and other fees in accordance with this Agreement.

3.2 Terms of Payment: Unless otherwise described in the letter proposal or additional services requests, all fees and expenses will be invoiced monthly based on the amount of progress made by the Engineer each month. Invoices are due within thirty (30) days. Payments received more than 30 days after the invoice date will be subject to a late charge of 1.5% per month. The Engineer reserves the right to stop or suspend work should invoices not be paid in full within sixty (60) days of invoice date.

3.3 Retainer:

This section not used.

### **ARTICLE 4 – TERMINATION**

4.1 The Client or Engineer may terminate this Agreement without cause at any time prior to completion of the Services, including Additional Services, upon seven (7) days written notice to the other party. If the Agreement is terminated or suspended, then the Client agrees and shall compensate the Engineer for all Services performed together with all reimbursable expenses incurred prior to the termination or suspension date.

### **ARTICLE 5 – INDEMNITIES**

5.1 Subject to any limitations stated in this Agreement, Engineer will indemnify and hold harmless Client, its officers, directors, employees, and subcontractors, from and against all claims and actions, including reasonable attorney's fees, experts' fees and defense costs, arising out of damages or injuries to persons or tangible property to the extent they are caused by the willful misconduct, a professionally negligent act, error or omission of the Engineer or any of its agents, subcontractors, or employees in the performance of the Services under this Agreement and arising out of any other actions, errors or omissions that do not fall under the provisions or services of this Agreement. To the extent that any negligent act, error or omission by Engineer, its subcontractors, agents, staff, or consultants is determined to be the predominate or sole proximate cause of any injury or damage, Engineer agrees to indemnify and hold Client harmless.

Client agrees, to the fullest extent permitted by law, to indemnify, and hold harmless Engineer, its owners, directors, partners, managers, employees and subcontractors from any damages, liabilities or costs, including reasonable attorneys' fees, experts' fees and defense costs, for any property damage, injury or economic loss arising or allegedly arising from inaccuracy of information provided to Engineer by the Client; unauthorized use of documents; discovery, unearthing or transportation of hazardous materials<sup>[rips2]</sup>; or any other negligent act, error or omission by Client, its subcontractors, agents, staff, or consultants. To the extent that any

negligent act, error or omission by Client under the above listed instances, its subcontractors, agents, staff, or consultants is determined to be the predominant or sole proximate cause of any injury or damage, Client agrees to indemnify and hold Engineer harmless.

#### **ARTICLE 6 – LIMITS OF LIABILITY**

6.1 Neither party to this Agreement is responsible to the other for consequential damages including, but not limited to, loss of profit, loss of investment or business interruption. In the event of a claim or dispute, both parties agree not to seek consequential damages including, but not limited to, loss of profit, loss of investment, or business interruption. In the event of a claim or dispute, the Client also agrees to seek recourse ONLY against Engineer and NOT against its owners, officers, managers, employees, directors, or shareholders.

No director, owner, manager, employee or agent of Engineer shall have personal liability to the Client. The Client agrees that, to the fullest extent permitted by law, the Engineer's total liability to the Client for any and all injuries, claims, loses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, the Engineer's negligence, errors, omission, strict liability or breach of contract, shall not exceed the total compensation received by the Engineer under this Agreement. In no event and under no circumstance shall either party be liable to the each other for consequential, incidental, indirect, special, or punitive damages.

#### **ARTICLE 7 – JURISDICTION**

7.1 This Agreement is entered into and performable in Travis County, Texas. This Agreement shall be governed by the laws of the State of Texas. The parties agree that venue for any dispute or claim arising from or involving this Agreement will lie in Travis County, Texas.

#### **ARTICLE 8 – OWNERSHIP OF DOCUMENTS**

8.1 All partial or complete designs, drawings, plans, specifications, documents, calculations, or other work products of the Engineer, whether hardcopy or electronic format, prepared under these Services by Engineer or its subconsultants, shall be considered instruments of its service and shall be considered property of the Engineer, whether the Services are completed or not. The Client is entitled to copies of the instruments of service according to the terms of this Agreement, provided the Engineer has been fully compensated for its services. No one other than Client may rely on such instruments of service without written consent of Engineer. Reuse, change or alteration by the Client, or by others acting through or on behalf of the Client, of any such instruments of service without written permission from Engineer will be at the Client's sole risk, without liability to the Engineer.

#### **ARTICLE 9 – MISCELLANEOUS**

9.1 Amendment: This Agreement, upon execution by both parties hereto, can be amended only by written instrument signed by both parties.

9.2 Assignment: The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party.

9.3 No Third-Party Beneficiary: Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit or inure to the benefit of any third party, including the Client's contractors, if any.

9.4 Severability: The various terms, provisions, and covenants herein shall be deemed separate and severable and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

9.5. **Interested Party.** Engineer acknowledges that Texas Government Code Section 2252.908 (“Section 2252.908”) requires disclosure of certain matters by a business entity entering a contract with a government entity such as the Client. Engineer confirms that it has reviewed Section 2252.908 and will 1) complete Form 1295 and electronically file it with the Texas Ethics Commission (“TEC”); and 2) submit the signed Form 1295, including the certification of filing number of the Form 1295 with the TEC, to the Client at the same time Engineer executes and submits this Agreement to Client. Form 1295 is available at the TEC’s website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). This Agreement is not effective until the requirements listed above are satisfied and any award of this Agreement by Client is expressly made contingent upon Engineer’s compliance with such requirements. The signed Form 1295 may be submitted to Client in an electronic format.

9.6 **Conflicts of Interest.** Engineer acknowledges that Texas Local Government Code Chapter 176 (“Chapter 176”) requires the disclosure of certain matters by vendors doing business with or proposing to do business with local government entities such as Client. Engineer confirms that it has reviewed Chapter 176 and, if it is required to do so, will complete and return FORM CIQ promulgated by the TEC and available on the TEC website at:<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf> seven (7) days of the date of submitting this Agreement to Client or within seven (7) days of becoming aware of a matter that requires disclosure under Chapter 176, whichever is applicable.

9.7 **Verification under Chapter 2271, Texas Government Code.** For purposes of Chapter 2271 of the Texas Government Code, Engineer represents and warrants that, at the time of execution and delivery of this Agreement, neither Engineer, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, boycotts Israel or will boycott Israel during the term of this Contract. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycotts Israel” and “boycott Israel” means 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. Engineer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Engineer and exists to make a profit.

9.8 **Verification under Chapter 2252, Texas Government Code.** Engineer represents and warrants that, neither Engineer, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, if any, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/publications/divestment.php>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes Engineer and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the same, if any, that the United States government has affirmatively declared to be excluded



from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Engineer understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with Engineer and exists to make a profit.

**9.9 Independent Contractor.** Engineer is an independent contractor not affiliated with Client and shall retain its independent status throughout this Agreement and use its own discretion in performing the tasks assigned. Engineer shall perform in all respects as an independent contractor and not as an employee, partner, joint venture or agent of the Client. No employment relationship is created by this Agreement. The work to be performed by the Engineer shall be subject to the Client’s review, approval and acceptance but the detailed manner and method of performance shall be under the control of Engineer. The accuracy, completeness, and scheduling of the work and the application of proper means and methods for performance of the work are entirely the responsibility of the Engineer. Engineer shall be solely responsible for hiring, supervising and paying its employees. Engineer shall be solely responsible for payment of all (i) compensation, including any employment benefits, to its employees, (ii) taxes, including withholding for federal income tax purposes, employment and unemployment taxes, and (iii) such other expenses as may be owed to Engineer’s employees. However, because Engineer’s work may be associated in the minds of the public with Client, Engineer shall ensure that all work by its employees is performed in an orderly, responsible and courteous manner. Engineer will report as income to the appropriate government agencies all compensation received pursuant to this Agreement and will pay all applicable taxes.

**ARTICLE 10 – ADDRESSES OF NOTICES AND COMMUNICATIONS**

10.1 Client: All notices and communications to the Client under this Agreement shall be mailed or delivered to the Client at the following address:

City of Sunset Valley  
3205 Jones Road  
Sunset Valley, Texas 78745  
Attention: Sylvia Carrillo, CPM, ICMA-CM

10.2 Engineer: All notices and communications to the Engineer under this Agreement shall be mailed or delivered to the Engineer at the following address:

Freeland Turk Engineering Group, LLC  
2115 Stephens Place, Suite 410-A  
New Braunfels, Texas 78130  
Attention: Thomas N. Turk, P.E.

Copies of notices and communications may be sent by email to [tturk@freelandturk.com](mailto:tturk@freelandturk.com)

**ARTICLE 11 – AUTHORIZATION**

11.1 The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

AGREED TO:

AGREED TO:

**City of Sunset Valley**

**Freeland Turk Engineering Group, LLC**

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

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

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

Printed Name: Thomas N. Turk, P.E

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

Title: Principal

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

Email: tturk@freelandturk.com

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**2020 Rate Schedule**  
**Freeland Turk Engineering Group, LLC**

**Hourly Rates**

Principal	\$ 175 /hour
Senior Project Manager	\$ 165 /hour
Project Manager	\$ 150 /hour
Sr. Design Engineer (P.E.)	\$ 145 /hour
Design Engineer (P.E.)	\$ 125 /hour
Engineering in Training (E.I.T)	\$ 110 /hour
Sr. Design Technician	\$ 110 /hour
Design Technician	\$ 90 /hour
CADD Technician	\$ 80 /hour
GIS Specialist	\$ 100 /hour
Administrative/Support Staff	\$ 75 /hour

**Reimbursable Expenses**

Mileage – Current IRS Standard Mileage Rate times Miles Traveled

Inside Office Printing - \$0.05 per page

Outside/Contract Printing & Plotting – Direct Cost plus 15%

Sub-consultants – Direct Cost plus 15%

Shipping – Direct Cost plus 15%

Overnight travel expenses (air fare, hotel, meals, rental cars, etc.) – Direct Cost plus 15%

Other miscellaneous expenses – Direct Cost plus 15%

## STANDARD BILLING RATES

### Standard Hourly Rates

Principal/Sr. Engineer	\$150 - \$180
Project Manager/Engineer	\$105 - \$145
Engineering Staff (EIT)	\$90 - \$110
Sr. CAD Designer	\$95 - \$120
CAD Designer	\$85 - \$100
CAD Technician	\$75 - \$95
Administrative	\$50 - \$85

### Reimbursables/Reproductions

Miscellaneous expenses including printing, courier, etc. will be invoiced at cost to MG plus a 15% administrative and handling charge. Mileage will be invoiced at the federal standard mileage rate for the current period.

### Subconsultants

All subconsultant services will be invoiced at cost to MG plus a 15% management, administrative and handling charge.

CITY COUNCIL MEETING DATE: MAY 5, 2020



Prior Council Adopted Item

## CITY COUNCIL AGENDA ITEM #9

**STAFF PREPARER:** Sylvia Carrillo, City Administrator, [scarrillo@sunsetvalley.org](mailto:scarrillo@sunsetvalley.org)

**SPONSOR:** Mayor Cardona, [rcardona@sunsetvalley.org/Administration](mailto:rcardona@sunsetvalley.org/Administration)  
[scarrillo@sunsetvalley.org](mailto:scarrillo@sunsetvalley.org)

**SUBJECT: ADMINISTRATION – RFQ SELECTION – ENGINEERING SERVICES**

**DESCRIPTION:** Presentation and selection of an Engineering Firm to serve as City Engineer pursuant to RFQ for Engineering Services approved for issuance on January 7, 2020.

**BACKGROUND:** On January 7<sup>th</sup>, the City Council approved the Request for Qualifications for Engineering Services. Six (6) firms, but only five (5) firms were responsive and the scoring for all firms is presented here. The committee was interviewed by a committee consisting of Councilmember Gonzales liaison to the Public Works Committee, Randy Machamel, Chair to the Public Works Committee, Carolyn Meredith, Staff Liaison to the Public Works Committee.

### Scoring Criteria

Step 1 – Met all RFQ requirements; move to next level. All firms, except 1, moved the next level. The firm who did not was missing required information listed in the RFQ.

Step 2 – Interview – 100 pts. The firms were presented with four (4) questions presented here; each of those questions was weighted 25 points. The firm with the highest score is who the committee would recommend for appointment to the City Council.

FIRM	SCORER				TOTAL	RANK
	CM	MG	RM	SC		
Miller/Gray	100	100	100	90	390	1
Freeland/Turk	89	79	90	90	348	2
Bowman	70	72	93	85	320	3
Bleyl	70	78	72	70	290	4
ICE	70	35	73	75	253	5

**APPLICABLE CODE SECTIONS:** City of Sunset Valley Financial Policy

**FUNDING:** Project Budgets/All Funds

**STAFF RECOMMENDATION:** Select and Appoint Miller/Gray as the City's Engineering Firm for a period of 3-5 years.

**SUPPORTING MATERIALS PROVIDED:** See links below for Engineering Firm's Responses

[Bleyl](#)

[Bowman](#)

[Freeland/Turk](#)

[ICE](#)

[Miller/Gray](#)