DEVELOPER PARTICIPATION AGREEMENT

This agreement (the "Agreement") is entered into effective ______, 2024 (the "Effective Date") by and between the City of San Marcos, a Texas municipal corporation (the "City"), and McCoy Corporation, a Texas corporation (the "Developer").

I. RECITALS

- **1.1** Section 212.071 of the Texas Local Government Code authorizes the City to participate with a developer of a subdivision or land in the cost to construct public improvements.
- 1.2 The Developer is developing a tract of land commonly known as the McCoy's Retreat Center in San Marcos, Hays County, Texas (the "Development"). The Developer is obligated under applicable ordinances to construct and dedicate certain public improvements necessary to support the Development.
- 1.3 The City has determined that there is a public need to oversize all or portions of such public improvements beyond what is required for the Development and, therefore, wishes to contract with the Developer to provide for the construction and allocation of costs for such oversizing. The improvements to be constructed by Developer pursuant to this Agreement are: (i) an 18" wastewater line (depicted and shaded in purple on Exhibit "B" attached hereto) (the "Wastewater Line"); (ii) a wastewater force main (depicted and shaded in green on Exhibit "B" attached hereto) (the "Developer Force Main"); (iii) an 8' tall stone fence with a lockable, sliding gate, to be constructed around the Lift Station (as hereinafter defined) (depicted in red on Exhibit "B" attached hereto) (the "Lift Station Fence"; the Wastewater Line, the Developer Force Main and the Lift Station Fence are herein referred to collectively as the "Improvements").
- 1.4 The City intends to construct a continuation of the Developer Force Main (the "City Force Main") and a Lift Station (the "Lift Station") pursuant to separate written easement executed by the Developer and the City, substantially as depicted and shaded in blue on Exhibit "B" attached hereto (the City Force Main and the Lift Station, collectively, the "City Improvements").
- **1.5** The Developer has requested the Improvements be established as a Pro Rata Improvement, in accordance with Chapter 86, Article 1, Division 2 Pro Rata Fees for Water and Wastewater Line Extensions, and fees assessed to properties identified within the service area of the Improvements.

II. AGREEMENT

In consideration of the mutual benefits to and obligations of the parties under this Agreement, the parties agree to the following terms and conditions:

2.1 Design and Construction of Improvements

2.1.1 Construction. The Improvements will be constructed by the Developer according to the final plans and specifications acceptable to and approved by the City in

accordance with the City's applicable ordinances, standards and processes; provided, however, that the City shall not unreasonably withhold, condition or delay approval of any such final plans and specifications to the extent generally consistent with Exhibit "B" attached hereto.

- 2.1.2 Project Manager. The Developer will act as project manager in the construction of the Improvements. If the plans for the Improvements are required to be sealed by a professional engineer, the Developer will ensure that the construction is carried out under the direct supervision of a professional engineer registered in the State of Texas. The City acknowledges and agrees that the plans for the Developer Force Main, the City Force Main and the Lift Station were developed by engineers hired directly by the City and in no event shall Developer have any liability in connection therewith.
- 2.1.3 Independent Contractor. The Developer shall be solely responsible for selecting, supervising and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage. The parties agree and understand that all contractors, employees, volunteers and personnel furnished or used by the Developer in the installation of the Improvements shall be the responsibility of the Developer and shall not be deemed employees or agents of City for any purpose.
- 2.1.4 Performance Bond. Developer will execute a performance bond to ensure completion of the Improvements. The bond must be executed by a corporate surety in accordance with the Chapter 2253 of the Texas Government Code.
- 2.1.5 Warranty. The contract with the contractor will provide for at least a one-year warranty against defects in materials and workmanship. This warranty obligation shall be covered by any performance or payment bonds required of the contractor under the terms of the construction contract.
- 2.1.6 Completion and Acceptance. The date of completion shall be the date on which the City accepts the Improvements in accordance with the City's applicable ordinances, standards and processes and provides notice of such acceptance in writing to the Developer. Prior to the City's acceptance of the Improvements, Developer shall, among other applicable requirements, provide to the City a one-year warranty from the contractor against defects in materials and workmanship in the Improvements and a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen and subcontractors have been released, and that there are no claims pending of which Developer has been notified.

2.2 Cost Participation

2.2.1 Cost Participation Amount. The City is cost participating in the Improvements in an amount not to exceed \$430,000.00 for those portions of the work additionally requested by the City as itemized in Exhibit "A." The Developer will be responsible for paying the remainder of the costs for the Improvements. Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, the City shall bear the full cost of the City Improvements.

- 2.2.2 Limits of Participation. Except as to the costs attributable to the oversizing of the Improvements requested by the City, the City's cost participation with respect to the Improvements shall not exceed the amount referenced in 2.2.1.
- 2.2.3 Application for Payment. The Developer shall submit a written application for City participation payment after the City's acceptance of the Improvements. The application for payment to the City shall be for the lesser of the amount of the actual costs associated with the City's portion of the Improvements or the City's participation amount as stated in paragraph 2.2.1. The application for payment shall be in a form acceptable to City and must include a breakdown of actual costs of the Improvements with supporting documentation, including all payment receipts and any other documentation reasonably requested by the City to support the City's expenditure of public funds.
- 2.2.4 City Payment. Subject to all applicable ordinances, standards and processes, the City will pay its participation funds in one payment within 30 days after receipt of a complete (as determined by the City) written application for participation payment from Developer.
- 2.2.5 Payments to Subcontractors and Suppliers. The Developer shall be solely and exclusively responsible for compensating any of its contractors, employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and insuring that no claims or liens of any type will be filed against any property owned by the City arising out of or incidental to the performance of any service performed pursuant to this Agreement. In the event a statutory lien notice is sent to the City, the Developer shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold City harmless from any losses that may result from the filing or enforcement of any said lien notice.

2.3 GOVERNMENTAL IMMUNITY, INDEMNITY AND RELEASE

- 2.3.1 No Waiver of Immunity. The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.
- 2.3.2 Indemnity and Release. Developer agrees to and shall indemnify, hold harmless, and defend City and its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, expert fees and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract, arising out of or in connection with the work done by Developer, its officers, employees, agents and contractors, under this Agreement, regardless of whether such injuries, death, damages or breach are caused in whole or in part by the negligence of City, any other party indemnified hereunder, or the Developer.

- 2.3.3 Indemnity and Hold Harmless as to Subcontractors. The Developer shall indemnify and hold the City harmless from any claims of suppliers or subcontractors of Developer for improvements constructed or caused to be constructed by the Developer.
- 2.3.4 Indemnity and Hold Harmless as to Others. The Developer shall indemnify and hold the City harmless from any and all injuries to or claims of adjacent property owners or occupants resulting from or relating to the Developer's performance under this Agreement.
- 2.3.5 Release. The Developer assumes full responsibility for the work to be performed hereunder, and releases, relinquishes and discharges the City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense therefore, for any injury to or death of any persons and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with, the Developer's work to be performed hereunder. This release shall apply whether or not said claims, demands, and causes or action are covered in whole or in part by insurance and regardless of whether or not said claims, demands, and causes of action were caused in whole or in part by the negligence of the City, any other party released hereunder, or the Developer.

2.4 Miscellaneous

- 2.4.1 Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement between the parties hereto and may be amended only by a written document signed by the parties. This Agreement shall be binding upon the successors and assigns of the parties. The assignment of all or part of this Agreement by a party is not valid without the written consent of the other party.
- 2.4.2 Subject to Ordinances and Laws. This Agreement and the obligations of the parties hereunder are subject to all valid and applicable ordinances, fees (including City impact fees and/or pro rata fees), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.
- 2.4.3 Applicable Law and Venue. This Agreement shall be governed and construed under and in accordance with the laws of the State of Texas. Jurisdiction and venue for any matter arising out of this Agreement shall be in Hays County, Texas. Jurisdiction and venue in federal court for matters arising out of this Agreement shall be in the United States District Court for the Western District of Texas, Austin Division.
- 2.4.4 Severability. If any the provision of this Agreement is held to be invalid or unenforceable by a court of proper jurisdiction, the holding will not affect any other provisions of this Agreement if the Agreement can be given effect without the invalid provision. The Parties will construe the Agreement as if the invalid or unenforceable

provision had not been contained in this Agreement.

2.4.5 Books and Records. All of the Developer's books and other records related to the design, bidding and construction of the Improvements shall be available for inspection by the City.

EXECUTED to be effective as of the Effective Date first written above.

CITY:	DEVELOPER:
	MCCOY CORPORATION, a Texas corporation
By:Stephanie Reyes, City Manager	By:
	Name:
	Title:

EXHIBIT ADescription and City Cost Share Portion of Improvements

Portion of Improvements	Total Estimated Cost
Wastewater Line	\$63,690.12
Developer Force Main	\$193,893.36
Lift Station Fence	\$137,603.85
Performance Bond	\$8,287.00
Total:	\$403,474.33



Number: 01

2703 Telecom Parkway, Suite 120 Richardson, TX 75082

Project: McCoy Headquarter Expansion & Retreat C Contract Number: 2653. McCoy

2653. McCoy Headquarter Expansion & Retreat C

1200 Davis Ln.

San Marcos, TX 78666

Proposed Change Order #: 01-Sanitary Sewer per PICP

To (Contractor): Hill & Wilkinson Construction Group

2703 Telecom Parkway, Suite 120

Richardson, TX 75082

Change Order Date: 05/14/2024

You are directed to make the following changes in this Contract:

 C.O.
 Change in Days UM
 Description
 Unit Price
 Amount

 1
 LS
 Sanitary Sewer per PICP
 143,742.28

Cost to provide and install (2) sanitary sewer manholes and associated 18" sewer piping, including tie-in to existing manhole as shown in the Public Improvement Construction Plans (PICP).

Total For Change Order before Add Ons:143,742.28Subcontractor Default Ins.2,156.13General Liability Insurance1,438.56Builders Risk Ins95.77Fee6,265.89

Total For Change Order: 153,698.63

Authorized By Owner:	Authorized by Architect:	Authorized by Contractor:
McCoy Corporation, Inc. 1350 IH 35 North San Marcos, TX 78666	Andersson Wise Architects, Inc. 807 Brazos Street #800 Austin, TX 78701	Hill & Wilkinson Construction Group 2703 Telecom Parkway, Suite 120 Richardson, TX 75082
Ву:	By:	By: Qason Ballard
Date:	Date:	Date:



CHANGE ORDER NUMBER: 24-100-CO-01

DESCRIPTION: Public Sanitary Sewer 18" vs 8" pipe sizing

Job Name: McCoy's Retreat
Date: 2/14/2024

			Takeoff	To	tal Labor	Tota	l Material &	Tot	al Unit		
Bid Item	Bid Description	Units	Quantity	&	Equip	Sub		Cos	it	Bid	Total
	OPTION 1										
	Ŝewer										
10	Rehab/Adjust Existing Manhole	LS	1	\$	1,351.27	\$	10,627.12	\$	11,978.39	\$	11,978.39
30	Install SS Manhole 5' DIA	EA	2	\$	3,722.00) \$	10,652.33	\$	14,374.33	\$	28,748.66
40	SS Manhole Extra Depth	VF	6.45	\$	135.01	. \$	397.88	\$	532.89	\$	3,437.14
50	Sewer Testing	LF	394	\$	5.06	\$	7.25	\$	12.31	\$	4,850.14
60	Install 18" Sewer Pipe SDR26 (10'-12')	LF	394	\$	59.37	\$	128.47	\$	187.84	\$	74,008.96
70	Trench Protection	LF	394		1.5	0 \$	3.50	\$	5.00		1970.00
						Sub	o-Total:			\$	124,993.29
						159	% OH&P:			\$	18,748.99
						Tot	al:			\$	143,742.28

Notes:

1.) San Marcos will require a complete initial vacuum test, rehab and retest of the existing manhole that we are tieing into

OPTION 2							
Sewer							
10 Rehab/Adjust Existing Manhole	LS	1	\$ 1,351.27	\$	10,627.12	\$ 11,978.39	\$ 11,978.39
30 Install SS Manhole	EA	2	\$ 2,478.22	\$	7,644.57	\$ 10,122.79	\$ 20,245.58
40 SS Manhole Extra Depth	VF	6.45	\$ 135.01	\$	397.88	\$ 532.89	\$ 3,437.14
50 Sewer Testing	LF	394	\$ 3.50	\$	4.00	\$ 7.50	\$ 2,955.00
60 Install 8" Sewer Pipe SDR26 (10'-12')	LF	394	\$ 39.37	\$	56.27	\$ 95.64	\$ 37,682.16
70 Trench Protection	LF	394	1.50	\$	3.50	\$ 5.00	1970.00
				Sub	-Total:		\$ 78,268.27
				15%	6 OH&P:		\$ 11,740.24
				Tot	al:		\$ 90,008.51

Notes:

^{1.)} San Marcos will require a complete initial vacuum test, rehab and retest of the existing manhole that we are tieing into



Number: 04

2703 Telecom Parkway, Suite 120 Richardson, TX 75082

Project: McCoy Headquarter Expansion & Retreat C Contract Number: 2653. McCoy Headquarter Expansion & Retreat C

1200 Davis Ln.

San Marcos, TX 78666 Proposed Change Order #: 04-Lift Station Screening

To (Contractor): Hill & Wilkinson Construction Group Change Order Date: 05/21/2024

2703 Telecom Parkway, Suite 120

Richardson, TX 75082

You are directed to make the following changes in this Contract:

C.O.	Change			
Item	in Days UM	Description	Unit Price	Amount
	1 LS	Earthwork - Champi	on	7,300.00
	Earthwork associated with	th fence scope only. C	ity to provide grading at location.	
:	2 LS	Concrete - BCS		37,375.00
	Concrete footings for the	two masonry sides. F	Pricing based on 2'x3'-6" continuous footing	
;	3 LS	Fencecrete - Fence	crete America	15,800.00
	Fencrete panels on 2 sid	es as noted on the att	ached markup. Pricing is based on 100 LF of fencing @ 158 per LF	
	4 LS	Masonry - Galindo 8	& Boyd	59,940.00
	CMU wall with stone ven Stone pricing to be confii		rior face only at two walls per the attached. Interior face of wall to be exponents on is made for stone.	posed CMU.
	5 LS	Gate - Viking		8,275.08
	•		v-track slide gate made with 2" frame and 2" x 9 gauge x 8' chain link fa drop rod and latch with pad lock provisions.	bric. Mounted on
			Total For Change Order before Add Ons:	128,690.08
			Subcontractor Default Ins.	1,930.36
			General Liability Insurance	1,287.92
			Builders Risk Ins	85.74
			Fee	5,609.75
			Total For Change Order:	137,603.85

Please note that pricing will expire in 30 days. Pricing will need to be updated once final design drawings are issued.

The following scopes are specifically excluded from this budget.

- * Concrete Flatwork
- * Utilities
- * Clearing/Grading
- * Arborist
- * Bollards
- * Paint interior side of CMU
- * Landscaping

Bonding cost to be reconciled in a separate PCO.



Number: 04

2703 Telecom Parkway, Suite 120 Richardson, TX 75082

Authorized By Owner:	Authorized by Architect:	Authorized by Contractor:
McCoy Corporation, Inc. 1350 IH 35 North San Marcos, TX 78666	Andersson Wise Architects, Inc. 807 Brazos Street #800 Austin, TX 78701	Hill & Wilkinson Construction Group 2703 Telecom Parkway, Suite 120 Richardson, TX 75082
Ву:	_ By:	By: Qason Ballard
Date:	_ Date:	Date: <u>05/21/2024</u>



Number: 05

2703 Telecom Parkway, Suite 120 Richardson, TX 75082

McCoy Headquarter Expansion & Retreat C Contract Number: Project:

2653. McCoy Headquarter Expansion & Retreat C

1200 Davis Ln.

San Marcos, TX 78666

Proposed Change Order #: 05-City Force Main

To (Contractor): Hill & Wilkinson Construction Group

2703 Telecom Parkway, Suite 120

Richardson, TX 75082

Change Order Date: 05/23/2024

You are directed to make the following changes in this Contract:

C.O. Change

in Days UM **Unit Price** Item Description Utilities - RTM

181,333.25

Amount

Cost associated with force main per City of San Marcos drawings from James L. Hoelscher dated 4/15/24 and City Specifications

Total For Change Order before Add Ons: 181,333.25 Subcontractor Default Ins. 2,720.00 1,814.77 General Liability Insurance Builders Risk Ins 120.81 Fee 7,904.53

Total For Change Order: 193,893.36

Bonding cost to be reconciled in a separate PCO

Authorized By Owner:	Authorized by Architect:	Authorized by Contractor:
McCoy Corporation, Inc. 1350 IH 35 North	Andersson Wise Architects, Inc. 807 Brazos Street #800	Hill & Wilkinson Construction Group 2703 Telecom Parkway, Suite 120
San Marcos, TX 78666	Austin, TX 78701	Richardson, TX 75082
Ву:	Ву:	By: Qason Ballard
Date:	_Date:	Date: 05/23/2024



CHANGE ORDER NUMBER: 24-100-CO-06R1

DESCRIPTION: Davis Lane LS Force Main

Job Name: McCoy's Retreat Date: 5/22/2024

			Takeoff	To	tal Labor	Tota	l Material &	Tot	al Unit		
Bid Item	Bid Description	Units	Quantity	& I	Equip	Sub		Cos	t	Bid	Total
	Sewer										
10	Tie Into SS Manhole	EA	2	\$	1,146.38	\$	975.88	\$	2,122.26	\$	4,244.52
20	6" Force Main Tie In (Deep)	EA	1	\$	1,973.28	\$	1,672.54	\$	3,645.82	\$	3,645.82
30	10" Force Main Tie In (Deep)	EA	1	\$	2,146.87	\$	1,841.37	\$	3,988.24	\$	3,988.24
40) 6" HDPE DR 11	LF	670	\$	45.17	\$	38.19	\$	83.36	\$	55,851.20
50) 10" HDPE DR 11	LF	670	\$	45.17	\$	52.69	\$	97.86	\$	65,566.20
60) Fittings	LS	1	\$	3,547.55	\$	2,988.56	\$	6,536.11	\$	6,536.11
70	Hydrostatic Testing	LF	670	\$	2.00	\$	2.50	\$	4.50	\$	3,015.00
75	TV Inspection	LF	1340			\$	3.00	\$	3.00	\$	4,020.00
80	Trench Protection	LF	670	\$	1.50	\$	3.50	\$	5.00	\$	3,350.00
90	Submittal process	LS	1	\$	1,500.00			\$	1,500.00	\$	1,500.00
100	Asbuilts & Const Sequence Plan	LS	1	\$	1,900.00			\$	1,900.00	\$	1,900.00
110	Spoils Hauloff	CY	254	\$	2.50	\$	13.50	\$	16.00	\$	4,064.00
						Sub-	Total:			\$	157,681.09
						15%	OH&P:			\$	23,652.16
						Tota	l:			\$	181,333.25

Notes:

- 1.) Pricing above reflects plan sheets from James L. Hoelscher P.E. dated 4/15/24.
- $2.) \ Additional \ footage \ quantity \ above \ reflects \ vertical \ offsets \ shown \ in \ profile \ of \ forcemains.$
- 3.) Items 40&50 pricing increased due to new city spec (from 2022) that was unaccounted for requiring white interior coating on the forcemain piping systems.



Number: 09

2703 Telecom Parkway, Suite 120 Richardson, TX 75082

Project: McCoy Headquarter Expansion & Retreat C Contract Number: 2653. McCoy Headquarter Expansion & Retreat C

1200 Davis Ln.

San Marcos, TX 78666 Proposed Change Order #: 09-Performance & Maintenance Bond

for PCO 01, 04 and 05

To (Contractor): Hill & Wilkinson Construction Group

2703 Telecom Parkway, Suite 120

Richardson, TX 75082

Change Order Date: 05/30/2024

You are directed to make the following changes in this Contract:

 C.O. Item
 Change in Days UM
 Description
 Unit Price
 Amount

 1
 LS
 Performance & Maintenance Bond for PCO 01, 04 and 05
 8,287.00

Performance Bond and 1 year Maintenance Bond for City scope per the below PCO values

PCO 01 - Sanitary Sewer per PICP = \$153,698.63 PCO 04 - Lift Station Screening = \$137,603.85

PCO 04 - Lift Station Screening = \$137,603 PCO 05 - City Force Main = \$193,893.36

Total For Change Order: 8,287.00

Authorized By Owner:	Authorized by Architect:	Authorized by Contractor:
McCoy Corporation, Inc. 1350 IH 35 North	Andersson Wise Architects, Inc. 807 Brazos Street #800	Hill & Wilkinson Construction Group 2703 Telecom Parkway, Suite 120
San Marcos, TX 78666	Austin, TX 78701	Richardson, TX 75082
Ву:	By:	By: <u>(asen 15 allard</u>) Date: 06/05/2024
Date:	Date:	Date: <u>06/03/2024</u>

EXHIBIT B

DEPICTION OF IMPROVEMENTS AND CITY IMPROVEMENTS [NEXT PAGE]

