



# Construction (Water) Audit

## Village Creek Drainage Basin

### Main 325 Parallel Relief Sewer

#### Part 2

June 14, 2024

#### Mayor

Mattie Parker

#### Council Members

Carlos Flores, District 2<sup>††</sup>

Michael D. Crain, District 3

Charles Lauersdorf, District 4

Gyna Bivens, District 5

Jared Williams, District 6<sup>††</sup>

Macy Hill, District 7

Chris Nettles, District 8

Elizabeth M. Beck, District 9

Alan Blaylock, District 10<sup>†</sup>

Jeanette Martinez, District 11<sup>††</sup>

<sup>†</sup> Audit Committee Chair

<sup>††</sup> Audit Committee Member

#### City of Fort Worth Department of Internal Audit

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Fort Worth, Texas 76102

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**The Construction (Water) Audit [Village Creek Drainage Basin, Main 325 Parallel Relief Sewer, Part 2] was conducted as part of the Department of Internal Audit's Fiscal Year 2024 Annual Audit Plan.**

### **Audit Objective**

The objective of this audit was to determine whether the construction project was completed in accordance with contract terms and applicable laws.

### **Audit Scope**

Our audit included a review of the project from December 2, 2019 (project commencement date) through December 19, 2022 (date of "Notice of Project Completion"). Activity beyond this period was reviewed as deemed necessary.

### **Opportunity for Improvement**

Verifying contractor compliance with prevailing wage rate reporting requirements

Adherence to Minority Business Enterprise contracting requirements

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## **Executive Summary**

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As part of the Fiscal Year 2024 Annual Audit Plan, the Department of Internal Audit conducted a construction audit of the Village Creek Drainage Basin, Main 325 Parallel Relief Sewer, Part 2. The project (City Project #01333) was managed by the City's Water Department.

Internal Audit concluded that construction was performed and completed in accordance with contract terms and applicable laws. However, contractor affidavits, stating compliance with Chapter 2258 of the Texas Government Code - *Prevailing Wage Rates*, were not on file. Internal Audit was, therefore, unable to determine compliance.

Internal Audit also concluded that the contractor did not meet the City's 5% Minority Business Enterprise goal.

These audit findings are discussed in further detail within the [Detailed Audit Findings](#) section of this report.

# Table of Contents

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Background..... 1

Objective..... 2

Scope..... 2

Methodology..... 2

Audit Results..... 3

Overall Risk Evaluation..... 4

Detailed Audit Findings..... 5

Acknowledgements..... 7

## Background

The City of Fort Worth (City) publicly advertised and selected the lowest bidder to construct Part 2 of the Village Creek Drainage Basin, Main 325 Parallel Relief Sewer. The project (City Project #01333) is located in Council Districts 6 and 8.

The resultant contract with McKee Utility Contractors, Inc. (Contract #52970) was executed on October 22, 2019 in the amount of \$13,188,447.00. The City and McKee Utility Contractors, Inc. initially agreed that construction would be completed for “Final Acceptance” within 650 calendar days after contract commencement. However, the City processed change orders to extend construction time by 395 calendar days. Construction commenced on December 2, 2019.

For quality assurance purposes, the City contracted with Dannenbaum Engineering Corporation to provide engineering services such as design data, preliminary estimates of probable construction cost, drainage calculations, preliminary technical specifications, etc.



Source: Dannenbaum Engineering Corp's Site Observation Report - January 14, 2021



Source: Water Department CCTV footage, evidencing the City's inspection of underground sewer



## Objective

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The objective of this audit was to determine whether the construction project was completed in accordance with contract terms and applicable laws.

## Scope

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Our audit included a review of the construction project from December 2, 2019 (project commencement date) through December 19, 2022 (date of “Notice of Project Completion”). Activity beyond this period was reviewed as deemed necessary.

## Methodology

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To achieve the audit objective, the Department of Internal Audit performed the following:

- interviewed Water Department personnel;
- reviewed contract terms and related laws;
- verified compliance with bonding and insurance requirements, City policies and procedures, and City Minority Business Enterprise (MBE) terms;
- reviewed for compliance with the contract and prevailing wage rate requirements;
- compared quantities charged to (and paid by) the City, to quantities bid by the contractor;
- reconciled number of days allowed per contract and change orders to final count of days;
- reviewed daily inspection logs, Site Engineer’s Observation Reports, as well as laboratory material quality inspection reports/notes;
- reviewed final inspection and project closeout processes; and,
- evaluated internal controls related to construction contracts and projects.

We conducted this performance audit in accordance with generally accepted government auditing standards, except for peer review<sup>1</sup>. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>1</sup> Government auditing standards require audit organizations to undergo an external peer review every three years. A peer review was due in June 2024, but is not planned until FY2025, for the three-year period ending December 31, 2023.



## Audit Results

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Based on audit testing, we concluded that Part 2 of the Village Creek Drainage Basin, Main 325 Parallel Relief Sewer construction project was advertised and awarded in compliance with City policies and applicable law, and construction was consistent with construction plan diagrams. Furthermore, the contractor (McKee Utility Contractors, Inc.) complied with insurance, performance, and payment bond requirements specified within the contract. Additionally, laboratory inspection reports indicated that sampled inputs conformed with the specified standards.

As noted in the following table, we concluded that construction was completed within budget and within the 1,045 authorized calendar days.

Description	Contracted Amount / Amount Paid	Authorized Number of Calendar Days	Actual Number of Calendar Days
Unit Price Contract	\$13,188,447.00	650	650
Change Orders	363,602.24	395	207
<b>Totals</b>	<b>\$13,552,049.24</b>	<b>1,045</b>	<b>857</b>

Source: City Construction Project Files

We did, however, observe that contractor prevailing wage rate affidavits (required by General Conditions as confirmation of compliance with Chapter 2258 of the Texas Government Code, *Prevailing Wage Rates*) were not on file. Internal Audit was, therefore, unable to verify wage rates paid by the contractor. Also, the contractor did not meet the City's MBE requirement.



## Overall Risk Evaluation

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High	Medium	Low
	No support to validate contractor's compliance with prevailing wage rate requirements	
	Contractor non-compliance with MBE sub-contracting requirement	



## Detailed Audit Findings

### 1. No affidavit was available to support the contractor's compliance with prevailing wage rate requirements.

Article 6.07 F of the City's Standard Construction Specification Documents (within the Standard General Conditions of Construction Contract #52970) indicates that: "*Progress Payments.* With each progress payment or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code."

Since neither certified payroll records or affidavits were available, Internal Audit could not determine whether wages paid were compliant. Based on our audit results, the Contractor did not submit affidavits with each progress payment or payroll period. Affidavits were not in BIM360 (the City's construction records management system) and the Water Department could not provide supporting records by the end of this audit. Internal Audit had no verifiable evidence that the Water Department monitored or assured that the Contractor complied with prevailing wage requirements. By not receiving affidavits or monitoring wages paid to the contractor's employees, the City is not able to verify that the contractor complied with the state regulation.

**Recommendation 1:** *The Water Department Director should ensure compliance with Article 6.07 F of the Standard General Conditions of the construction contract.*

**Auditee's Response:** Concur.

**Target Implementation Date:** July 1, 2024

**Responsibility:** Tony Sholola, Assistant Water Department Director

**Applicable Department Head:** Chris Harder, Water Department Director

**Applicable Assistant City Manager:** Fernando Costa

### 2. Minority Business Enterprise (MBE) requirements were not met.

In accordance with the "Special Instructions for Offerors" (which is included with the City's Minority Business Enterprise Specifications) and Section 00 45 40 of the Minority Business Enterprise Specifications, the City's MBE goal on this project was 5% of the total bid value of the contract. Mayor and Council Communications supporting this project (M&C 19-0204) also indicated that the City's MBE goal on this project was 5%.

With the contract amount being \$13,552,049.24, McKee Utility Contractors, Inc was required to utilize and pay a total of \$677,602.46 to MBE subcontractor(s). However, documentation reviewed during this audit indicated that McKee Utility Contractors, Inc. paid \$652,304.78, a difference of \$25,297.68. The contractor, therefore, did not meet the City's 5% MBE goal.

McKee Utility Contractors, Inc's payments to the MBE subcontractor represented 4.813% of the total contract. However, the City's Department of Diversity and Inclusion considered the contractor compliant after rounding the total MBE payment percentage from 4.813% to 5%. Accordingly, the Department of Diversity and Inclusion did not issue a "Not Meeting Goal Letter" to McKee Utility Contractors, Inc.





Internal Audit concluded that since McKee’s total MBE payments did not meet or exceed the 5% MBE goal, McKee was noncompliant with the City’s MBE requirements. While the percentage difference was less than 1%, when monetized, that percentage difference (or \$25,297.68) could be considered significant to minority-owned businesses. Furthermore, rounding up seems to somewhat defeat the purpose of the City’s MBE program which is to “remedy past underutilization and provide a fair and level playing field for Business Equity Firms and to encourage the participation of Business Equity Firms to contract with the City.”

**Recommendation 2:** *The Department of Diversity and Inclusion Director should discontinue the practice of rounding up MBE payment percentages, and base compliance on contract requirements and actual payments made to MBEs.*

**Auditee’s Response:** Concur. We completely agree with the detailed findings and concur wholeheartedly that \$25,297.68 to a Business Equity Firm (MBE) can mean the difference between meeting payroll, or the ability to make a necessary capital investment or qualifying for a higher bonding capacity because they have funds in the bank.

1. Business Equity will no longer “round” to the nearest whole number to determine whether an awarded contractor has met or not met the agreed upon goal. The mathematical goal calculation to determine whether the contractor has met the goal must be at the agreed upon whole number threshold with 3 decimal places or above it to be in compliance.
2. Contractors whose goal calculations do not meet or exceed the agreed upon amount in whole numbers with 3 decimal places, will be issued a “Not Meeting Goal Letter.” Additionally, the letter should include the pending total dollar amount and percentage toward the final goal set to be in full compliance. The letter should also include instructions for the awarded contractor to submit documentation and or proof they have met the agreed upon goal, or provide evidence of good faith effort and a detailed explanation for not meeting the goal. All documentation must be reviewed and approved by Business Equity Division and will be added to the contractor profile in the City’s vendor software for review in future city contracts.

**Target Implementation Date:** Immediately. May 21, 2024

**Responsibility:** Nohemi Sanchez, Manager Business Equity Division

**Applicable Department Head:** Christina Brooks, Diversity and Inclusion Department Director

**Applicable Assistant City Manager:** Fernando Costa



## Acknowledgements

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The Department of Internal Audit would like to thank the Water Department and the Diversity and Inclusion Department for their cooperation and assistance during this audit.